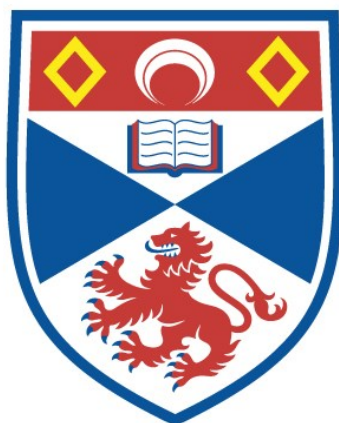


**THE DOCTRINAL DEVELOPMENT OF THE PROHIBITION
OF INTOXICATING DRINK IN ISLAMIC REVELATION AND
LAW**

Paul Leventhal

**A Thesis Submitted for the Degree of MPhil
at the
University of St Andrews**



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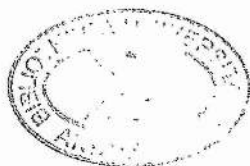
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by Paul Leventhal

A thesis submitted in fulfilment of the requirement for the degree of M.Phil.,

School of History, University of St. Andrews



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ABSTRACT

There is the feeling in many quarters, especially as reflected in most general readers on Islam, that the prohibition of wine is an established and simple fact, and may safely be disregarded as a peripheral subject deserving of note, but worthy of little more attention than the perusal of one or two 'clear' koranic verses. This view, however, cannot be held by anyone with a knowledge of the interaction between literary analysis and the study of Islamic historiography, religion and law. For the prohibition of intoxicating drinks came about over intensive debate motivated by an apparently inadequate Revelation and characterised by wide-ranging opinion to almost every aspect, every opinion backed up by its own source materials.

My research will describe and analyse the doctrinal development of the institutionalised prohibition of alcoholic beverages in Muslim tradition and law through a developmental approach. I will view the sources and proto-legal rulings as the product of social and moral trends arising from a nascent Community possessing Revelation and defined by their own separate institutions.

This shall be approached first of all by placing wine into a cultural framework by examining its status in monotheistic, polytheistic and pre-Islamic belief and ritual. Through this framework, the material included in the *Qur'ān* document will be discussed highlighting the prohibition of *ḥamr* as coming about through a series of incremental and reactionary steps reflecting social, cultural, religious and legal trends and ideas as noted by the prophetic legislator (or at least as tradition has portrayed).

As a parallel source of divinely guided legislation, the 'historical' tradition, the exegetically derived *Ḥadīth*, will be considered through the lens of theoretical discussions that later became connected to the 'real world,' and provided, sometimes successfully and sometimes not, for the socio-religious needs of the earliest Community. The remnants of the discussions between the scholars will be seen in the light of their efforts to understand the Revelation, and in doing so, created prophetic precedent that filled out and

completed the meaning of the Revelation, in effect becoming 'history.' Careful note and analysis will be undertaken of the implications of the alleged drinking habits of the Prophet himself, and the interpretations of a remarkable fact that the *Qur'ān* promises in the Hereafter a garden containing rivers, one of which is red wine, "pleasant to the drinker." The fundamental questions arising from these remnants are of course, what is 'wine,' what is allowed, what is not, and why?

The crime of wine-drinking, paralleled in severity to no less than idolatry, did not bring with it its own koranic punishment, as the other 'crimes against God' (*ḥadd*, pl. *ḥudūd*) should do. Indeed, how did wine-drinking even become connected to the other *ḥadd* crimes, and why? Addressed will be the legal problems the jurists were trying to solve, the tools they used, and the extent to which those problems were a product of their own making.

The Islamic materials can be viewed as either sources for the history of the early Islamic community, or as a record of what Muslims of later generations told each other about how the early Islamic community was 'supposed to have been'. My methodological approach to these source materials is not to try and reconstruct "what really happened" in the lifetime of the Prophet or in the first two generations of Believers who used this material as the basis of their communal ethic. Rather, through analysis and comparison of the different streams of thought within the earliest generations of the Community, I shall attempt to derive from the residues of their discussions how the Muslims reacted to *khamr* (and *sakar*) in the *Qur'ān*, what they were really talking about by circulating the exegetical materials, and why?

Throughout this work the term spelled "*Qur'ān*" will be used to denote the canonised work published and widely distributed by the "Custodian of the Two Holy Mosques King Faḥd ibn al-Azīz al-Sa'ūd (Madīna, A.H. 1405)." The spelled term "koranic" is used throughout, in keeping with the common un-capitalised form of "biblical," otherwise transliteration conforms strictly to the Encyclopaedia of Islam, new edition (Leiden, 1954-2000).

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- ii. I was admitted as a research student in August, 2000 and as a candidate for the degree of M.Phil. in 2001, the higher study for which this is a record was carried out for the University of St. Andrews between 2000 and 2002.

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TABLE OF CONTENTS

ABSTRACT.....	II
TABLE OF CONTENTS.....	V
ACKNOWLEDGMENTS	VI
A PRELIMINARY REVIEW: SURVEYING MODERN RESEARCH	1
INTRODUCTION: IDEAL VERSUS REALITY	5
PART ONE.....	14
THE 'SEMITIC' AND INDO-EUROPEAN LITERARY BACKGROUND	14
PRE-ISLAMIC POETRY: PROVIDING THE SOCIAL CONTEXT	25
PART TWO	29
THE ʔUR'ĀN AND ITS PLACE IN THE EVENTUAL PROHIBITION OF WINE IN ISLAM	29
TRADITIONAL CHRONOLOGY: ABROGATION TO STABILISE LEGISLATION.....	41
ʔUR'ĀN AND AUTHORITY: THE PROPHET'S NIGHT JOURNEY AND ASCENSION	47
PART THREE.....	52
THE ḤADĪTH: EXPLAINING AND COMPENSATING FOR AN INADEQUATE REVELATION.....	52
A. ḤADĪTH ON THE STATUS OF WINE AND THE DEGREE OF SIN	53
B. CRIME AND PUNISHMENT: SEARCHING FOR A FIXED PENALTY BY KORANIC INTERPRETATION.....	57
C. ḤADĪTH AS DOCUMENTATION IN SETTING AND JUSTIFYING PUNISHMENTS	60
D. KHAMR AND NABĪDH: ḤADĪTH ON THE NATURE OF WINE.....	72
PART FOUR	90
THE SOCIAL CONTEXT: MEDICINE, PHILOSOPHY, AND POLEMICS.....	90
NON-RELIGIOUS POETICAL WORKS DEALING WITH RELIGIOUS THEMES	95
CONCLUDING REMARKS.....	101
BIBLIOGRAPHY	A

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Grateful thanks need be expressed to Professor Yohanan Friedmann of the Hebrew University of Jerusalem for introducing me to his textual and critical approach, and Professor Joseph Sadan of Tel-Aviv University for his comments and suggestions in the field of wine and wine-drinking in Islam.

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A PRELIMINARY REVIEW: SURVEYING MODERN RESEARCH

I will begin this paper with a short review of directly relevant secondary literature. This, to survey the state of research in the field, and how my research can add to it.

Many general readers on Islamic studies do not touch upon the issue of one of the defining characteristics of Islam—the wine prohibition. For example: Bernard Lewis' *Arabs in History* (Oxford, 1993 edition); Michael Cook's *Muhammad* (Oxford, 1983); Arthur Jeffery's compilation *Islam: Muhammad and His Religion* (Colombia, 1958); G.E. von Grunebaum's two volumes *Classical and Medieval Islam* (Chicago, 1946); Patricia Crone's *Meccan Trade and the Rise of Islam* (Oxford, 1987), and *Slaves on Horses* (Cambridge, 1980); Alfred Guillaume's *Islam* (U.K., 1954, 1982); Malise Ruthven's *Islam in the World* (England, 1984), Goitein's *Studies in Islamic History and Institutions* (Leiden, 1966), W.M. Watt's *Bell's Introduction to the Qur'ān* (Edinburgh, 1970) and his collection of articles *What is Islam?* (London, 1968); Annemarie Schimmel's *Islam: An Introduction* (New York, 1992), and others. John Burton's major works (see bibliography), although extremely useful on a conceptual level when considering, amongst other things, the issue of abrogation, likewise surprisingly do not bring up wine (except in passing) and its relevance to that discussion.

Most general introductions to the Islamic religion written by Muslims, either take the wine prohibition simply as a direct consequence of God's Revelation to the Prophet, omit the matter entirely, and in one notable case, even distort the issue. Muḥammad Husein Haykal's, *The Life of Muḥammad* (Beirut, 1983 edition) mention wine only once in passing when he discusses morality in the Qur'ān; Martin Lings' (Mr. Abū Bakr Sirāḍī al-Dīn) *Muhammad: His Life Based on the Earliest Sources* (London 1983, 1991) does not mention wine at all, and Syed Ameer 'Alī, in his *Spirit of Islam* (New Delhi, 1922, 1997 edition) even consciously omits the river of wine in his description of Paradise and its *raison d'être*.

Any serious study of wine in Islam is greatly assisted by the relevant article (*Khamr*) in the *Encyclopaedia of Islam* (new edition), by A.J. Wensinck and J.

Sadan. However, as broad and qualitative as this survey is, many important facets of the debate are lacking: rivers of wine in Paradise, background precedents of the prohibition, and the critical implications of inner contradiction. Another broad study of wine in Islam is that carried out by Goldziher in his *Introduction to Islamic Theology and Law* (Princeton edition, 1981, with notes by Bernard Lewis, pp. 59-61). However, his four page study concentrates on how the theologians managed to invent materials primarily in order to provide those with an inclination to alcohol with literary materials absolving those drinkers of any real guilt. His rather simplistic study gives us the impression that the scholastic arguments revolved solely around ways to get around the 'clear' koranic prohibition. It is hard to accept this argument, and to some extent its implication that the *Qur'ān* was not at any time authoritative, and that attempts were systematically made to evade or mitigate the koranic rulings.

A number of general readers containing *some* reference to wine were consulted to assess how their authors approach this problematic and complex developmental issue. Generally, these references are placed within a discussion of broader matters such as abrogation and social life, and do not devote much time or energy to the subject. Books such as Reuben Levy's *Social Structure of Islam* (Cambridge, 1957, 1969, p. 164), briefly mentions wine amongst an in-depth discussion of abrogation and off-handedly mentions the simple koranic prohibition of wine without any further reference to *Ḥadīth*. In the same way, N.J. Coulson in *A History of Islamic Law* (Edinburgh, 1964, p. 11-12), only takes a few lines to remind the reader that the drinking of wine is declared forbidden, becoming a criminal offence "punishable by flogging." Others, such as H.J. Liebesny's *Law of the Near and Middle East* (N.Y., 1975, p. 229) describe wine amongst general offences in Islamic law in a few lines, here, for example quoting Abū 'l Ḥasan al-Māwardī (d. 1058 A.D., Baghdād): "drinking of any intoxicating beverage is forbidden by the *Qur'ān* and according to the classical jurists. The punishment for the offender was forty strokes or lashes." These are examples of the simplification of a highly complex and theologically significant

issue commonly found in general readers. R. Roberts in his *Social Laws of the Qoran* (London, 1925, 1971, p.114-5) is one of the few general sources that take issue with the work *khamr* and attempts a definition of its constituent meaning, albeit in a very superficial way.

Articles on wine in Islam are few and far between. Except for the promising sounding "Islam and Wine Drinking" by W.M. Watt (in *La Sapienza*, Rome, 1984, p. 847-850), and "A Muslim Encomium on Wine" by G. J. Van Gelder (in *Arabica*, 42, 1995, p. 222), both found on the CD-ROM version of *Index Islamicus* (ed Pearson, Behn, et. al., 1999), no other article was specifically devoted to the issue. Watt's survey of wine drinking is interesting from a social anthropological point of view, but in three pages, goes no further than the most surface analysis. Gelder's introduction to his discussion of a particular post-classical Arabic literary work simply compares wine and water vying for pride of place in Islamic literature through the ages.

It is clear there is ample room for a critical and developmental approach to the issue of wine and its place in Islamic theology and law, over and above the simplistic rehashing of Islamic traditional thought found in most general readers. It is a curious fact that considering the gravity of the crime in religious law and its lack of formal legislation, more work has not been done concerning this topic.

There can be little doubt that connecting the institution of the prohibition of wine, as well as its almost legendary importance in Islam, to other civilisations and cultures, and an examination of the consequences of this connection can add to a field little researched. My approach is critical, and takes the *Qur'ān* as the result of social and cultural influences upon its author/s. However it is not only the *Qur'ān* but the accompanying traditional Islamic scholarship available that allows for a further contribution to the field. I have therefore collected and thoroughly examined *tafsīr* materials (including *ḥadīth*), and associated them with the issue of abrogation and other tools of the commentators to

understand what they were really talking about in their theoretical discussions, the remains of which have survived.

It was not a simple command of God upon His Prophet that brought about this formative institution in Islam. It is my wish in this paper to arouse in the reader an awareness that the prohibition of all alcoholic beverages in Islam came about over a long period and after vigorous and brilliant academic debate over generations, motivated by a pious need to understand the Revelation.

INTRODUCTION: IDEAL VERSUS REALITY

a. One of the most characteristic traits of everyday Muslim public life is the total prohibition of alcohol, for intoxicating liquid (most commonly known in Arabic literature as *khamr*, and as we shall see, a loan word from Aramaic) is forbidden in the Qur'ān as being 'the cause of more evil than benefit':

'They shall question you [i.e. traditionally read as Muḥammad] concerning *khamr* and arrow-shuffling [i.e. according to the Commentaries, gambling and/or use of the arrow as a divining tool]. Say: "In both there is great sin and (also) uses for men, but the sin in them is greater than the usefulness."' ¹

The forbiddance of what we shall call 'wine' (which later jurists have by analogy extended to all alcoholic beverages in Muslim *Sharī'a* law), is absolute and based on those koranic verses branding it an abomination. Yet wine may also be considered the great Islamic beverage, not referring to the day-to-day life of Believers for whom, for example, water and milk are doubtless more essential than alcoholic drinks. In Arabic and Islamic literature however, water and milk, though present, tend to recede when the 'exotic' wine is spoken of. The Qur'ān often mentions water as one of God's blessings,² but usually because of its ability to revive the earth, and only a few times is water mentioned explicitly:

'We have sent down from the heavens water blessed, with which We cause to grow gardens and the harvest grain, and the high palms with fruited spikes, as a benefit for [Our] servants...' ³

'Let man consider his food. Indeed, We poured rain down, then we plowed the earth as furrows, and made spring out from it grain and grapes, vegetables and

¹ Qur'ān, *sūra* 2:219. As throughout this paper, references to the Qur'ān refer to the modern Cairo edition, prepared in the 1920s, and parallel the common edition printed in Madīna and widely distributed.

² See: *sūras* 2:22, 6:99, 13:17, 14:32, 15:22, etc.

³ *sūra* 50:9-11.

olives, palms, luxuriant gardens and lush meadows, as (a) benefit for you and your cattle.’⁴

Wine, too, is counted among God’s blessings,⁵ evidently reflecting the Persian and Greek heritage (examined presently) which so permeated Islamic cultural, theological and legal development in its formative period of roughly the first two centuries following the Prophet’s death, traditionally held to have been A.H. 11/A.D. 632.⁶

Although elsewhere, the Qur’ān expresses the idea that on earth, wine may be forbidden as “some of Satan’s work,”⁷ in the Hereafter, the pious may be compensated for this deprivation.⁸ In the koranic Paradise there are four rivers: of water, milk, honey—and free-flowing wine:

‘A similitude of the Garden [i.e. what Paradise is like], which those who keep the duty (to God) were promised, in it are rivers of water, not brackish, rivers of milk

⁴ *sūra* 80:24-32.

⁵ *sūra* 16:67, examined during the course of this paper.

⁶ It is a commonly held view amongst modern critical (Western) scholars that only then did the religious group of Believers *begin* to define themselves communally, doctrinally and institutionally in relation to other religions and cultures. See, for example, the introduction to John Wansbrough, *Koranic Studies: Sources and Methods of Scriptural Interpretation* (Oxford, 1977).

⁷ *sūra* 5:90.

⁸ As in *sūras* 37:45-47; 52:23; 56:17-19; 76:5-6, 15-18, 21; 78:34; 83:25-28. Notable is the fact that one of the important studies regarding wine in Islam fails to mention the (literary) fact of wine in Paradise, namely A.J. Wensinck, “*Khamr*”, *The Encyclopaedia of Islam*, New Edition, vol. IV (Leiden, 1997), 994. Hereafter, “*Khamr*”, *Et*², s.v. (A.J. Wensinck). There is an additional section at the end of the article: “As a Product” contributed by J. Sadan. This source, albeit lacking in some aspects, was used as the structural basis of my research, it being the most detailed examination of wine in Islam that I came across in the secondary literature.

not changing in flavour, and rivers of *khamr*, delicious to the drinkers; rivers too, of honey free-flowing..."⁹

According to the Commentators' exegeses, seeking to establish an explanation and context for various koranic verses, the wine of Paradise does not inebriate nor give a hangover. Thus, the Persian scholar al-Zamakhsharī (d. A.D. 1134) explains in his *Tafsīr* regarding this *sūra* that:

'By delight...what is meant is that the wine (*khamr*) is a pure pleasure which is accompanied by neither loss of consciousness nor crapulence nor headache nor any other ill-effect of wine.'¹⁰

This exegetical explanation derives from one verse of the Qur'ān, *sūra* 37:45-7: '(The wine is) brought around to them (in Paradise) in cups from a spring, white, delicious to the

⁹ *sūra* 47:15-16.

¹⁰ Maḥmūd ibn 'Umar al-Zamakhsharī, *Al-kashshāf 'an ḥaḳā'ik al-tanzīl* (The Unveiler of Secrets of the Revelation, completed A.D. 1134), ed. W.H. Lees, 2 vols. (Calcutta, 1856-9), vol. II, 69. This Commentary, has a dogmatic foundation as it is based on specifically Mu'tazilite doctrine. It is of less importance than al-Ṭabarī's (d. A.D. 923) *Tafsīr (al-djāmi' al-bayān...)*, probably due to the fact that Zamakhsharī omits parts of the traditional material (including some *isnāds*) and only includes what he thinks are important.

On the other hand, in his attempt to explain away the existence of an evidently uncomfortable wine-imbued Paradise, the modern writer Syed Ameer Alī addresses the issue in another way:

"Mohammed was addressing himself not only to the advanced minds of a few idealistic thinkers who happened to be then living, but to the wild world around him engrossed in materialism of every type. He had to adapt himself to the comprehension of all. To the wild famished Arab, what more grateful, or what more consonant to his ideas of Paradise than rivers of unsullied incorruptible water, or milk and honey; or anything more acceptable than unlimited fruit..."

The koranic river of wine has disappeared completely from this analysis! Syed Ameer Alī, *The Spirit of Islam: A History of the Evolution and Ideals of Islam with a Life of the Prophet* (New Delhi, 1997, first edition, 1922), 161.

drinker, no headache (is caused), nor are they intoxicated/crazed.¹¹ The explanation that the wine of Paradise has 'no ill-effect' (i.e. probably drunkenness or a hangover) reflects a certain apologetic justification for the evidently uncomfortable inclusion of the wine of Paradise within the Holy Book. However, amongst al-Ṭabarī's exegesis of this verse, a note is appended which briefly discusses the fragrance of the wine—musk or saffron—without any discomfort, nor any reference to intoxication.¹² This apologetic justification may be borne out by an examination of *sūra* 83:23-28 where the Righteous will be:

'On couches, they will look (around). You will know in their faces the glow of joy. They shall drink an exquisite *khamr*, sealed, the seal is of musk, and for this, let the strivers [i.e. the Believers?] strive. And it [i.e. the wine] is mixed with (the water of) *Tasnīm* (which is) a spring in which those approaching (*muḥarrabūn*) [God] will drink (from).'

The question of whether the koranic "glow of joy" is what characterises a resident of Paradise, or simply an effect of the vintage of Paradise, can, of course, only remain speculative. It was questions such as these, arising out of ambiguities within the holy text, that the commentators, the exegetes, felt the need to fill out, explain, and ultimately place within an historical framework. It is my aim to work out what these exegetes were really talking about in their long and detailed discussions of the sources and why.

¹¹ *sūra* 56:17-19 is similar with the addition that "the goblets, ewers and cups" are brought around by "immortal youths."

¹² An extract from a dictionary (*fī al-lisān*) under *fawḥ* ("diffusion of an odour") as cited in Muḥammad b. Ḍjarīr al-Ṭabarī, *al-djāmi' al-bayān 'an ta'wīl al-Ḳur'ān* (published Cairo, 1954), vol. 26, p. 49, n. 1. The excellence of traditional exegesis is evident in the activity of al-Ṭabarī, a scholar of Persian ancestry who is known as an outstanding collector of all manner of prophetic reports including those not in keeping with dogmatic positions. In addition to various theological and judicial works, al-Ṭabarī wrote a world history and huge commentary on the Ḳur'ān. Its value lies above all in his bringing together the entire breadth of traditional exegesis available to him in his time. He also includes his own comments regarding the validity or probability of an interpretation.

b. Although the traditional accounts of the earliest Muslim community present us with a detailed wealth of information, the character of the early community of Believers may be beyond the reach of non-traditional historical reconstruction. This is because we must rely on non-contemporary (generally from the ninth to the twelfth century 'Abbāsid), and inconsistent source materials allegedly compiled under the pressure of religious and political forces. Further, Islamic origins must be reconstructed based on chronicles and other written accounts produced *internally* by the Islamic tradition itself, on the whole projecting its contemporary ideals backwards to the time of the Prophet or his Companions. Obviously reconstructing Islamic origins based on such literary materials is problematic for the critic who desires the use of contemporary sources whenever possible.

Notwithstanding, the development of the prohibition of wine, despite the (sometimes) extensive redaction in particular parts of the traditional material, contains embedded within it sufficient material to reconstruct at least some of *the main issues* as debated by the early Believers, and the basic attitudes of the main parties to these debates. Furthermore, the development of the eventual prohibition of wine gives us a glimpse into how the later generations viewed the problems faced by the proto-Muslim, whether or not they reflect an 8th century reality, and the way in which early Islam developed as a reaction to its host society through its internal legislation.

c. Most of the basic notions underlying a civil society find a place in the Qur'ān: compassion for the weaker members of society, fairness and good faith in commercial dealings, and a mature approach to the administration of justice. All are seen as desirable norms of behaviour without, however, being translated into any legal structure of rights and duties. The same applies to many precepts that are more particularly Islamic. Drinking of 'wine' and usury (*ribā*, *sūra* 2:275) are both simply declared to be forbidden (*ḥarām*) in almost the same terms. But no indication of the legal ramifications of the practices is contained in the Qur'ān. In fact wine drinking later became a criminal offence

punishable by flogging while usury was deemed a civil matter, the transaction being a type of invalid or unenforceable contract.

d. The one particular crime appearing in Islamic law defined under the general term *ḥudūd Allāh* which concerns us here is of course wine-drinking. The term appears in the *Qur'ān* and was subsequently developed as an integral part of Islamic legal doctrine. In Islamic law, crimes defined as *ḥadd* generally constitute a fixed penalty determined by the fact that they are considered crimes against God, due to the special attention given them in Revelation.

Ḥudūd (the plural form of *ḥadd* deriving from the Arabic root *ḥ.d.d.*) is defined by J.G. Hava in the *al-farā'id Arabic-English Dictionary*¹³ as "limits; ends" with the construct form *ḥudūd Allāh* defined as "the bounds set by God to human freedom; the Law of God."

The Hebrew cognate seems to be *ḥad*, which means "sharp; acute." In compound phrases it refers to "mono;-one-; uni-," deriving from the Aramaic. The *ḥad Gadya* is a folksong sung during the *Pesakh* (Passover) festival based on the principle of Jewish morality, that there is no sin without punishment.¹⁴

The connection between the term and formal Islamic law is not a clear one, as a cursory reading of those instances in the *Qur'ān* where *ḥudūd Allāh* are mentioned bear no relevance to criminal law, but rather to the moral relationship between the Believer and God. A cursory examination of the *Qur'ān* concordance reveals under a dozen instances of the phrase. It would have been expected that the crimes that solidified in Islamic Law named as *ḥadd* crimes—including wine-drinking—would have appeared when the term *ḥudūd Allāh* was used. This is not at all the case. In fact, it is in separate verses that the

¹³ 5th ed., Beirut, 1982.

¹⁴ Reuben Alkalay, *The Complete Hebrew-English Dictionary* (Israel, 1963, 1970).

crimes themselves are mentioned, and *without* connection to the phrase. Generally each reference to *ḥudūd Allāh* is of a polemical or moral nature, without reference to criminal law.¹⁵

It is curious that the definition for the "limits" was left vague without exception. Why? Did the composer(s) of the verses have any idea of what these limits should be? Were they left undefined because it was clear they would not have been adhered to? Or, on the other hand, perhaps those limits were obvious enough not to have been stated again. And finally, how did criminal law find connection to the term *ḥudūd Allāh*, and under what circumstances did wine-drinking end up connected to those other *ḥadd* crimes?

e. The traditionally accepted view of Muḥammad's career as a lawgiver is that, while in Mecca, he acted primarily as preacher and prophet, whereas in al-Madīna the requirements of an ever-growing community forced him to give 'legal' decisions from time to time. This view is based on those verses that apparently indicate a belief of the Prophet that the Last Judgement and the end of the known physical world were imminent,¹⁶ and the Believers needed a code of admission to Paradise.

If so, what purpose was there, then, in expounding an elaborate legal system, when all human beings were to come to an end soon? However, it is true that even the earliest parts of the *Qur'ān* are not devoid of legal matters. For instance, when the Prophet enjoins

¹⁵ The *sūras* in which the term appears: *Q*, 2:187 related to sexual relations during the unspecified "fast period"; *Q*, 2:229-30 relating to conditions of divorce and remarriage; *Q*, 4:13-14 dealing with reward and punishment regarding those transgressing the undefined *ḥudūd*; *Q*, 9:97 a polemical outburst seemingly directed against the "Nomadic Arabs"; *Q*, 9:112 defining the perceived ideal Believer; *Q*, 58:4 seeming to refer to compensation for an inability to perform un-stated religious rites, and *Q*, 65:1 which addresses social and family behaviour regarding spouse relationships.

¹⁶ Amongst other strongly worded warnings to mankind are *sūras* 101 ('The Day of Judgement'), 99 ('The Earthquake'), 84 ('The Spitting Open [of Heaven]'), 82 ('The Darkening'), etc.

his audience to keep to their pledges and contracts, to stand by their testimony (*sūra* 70:32-33) and to be just in measure and weight (*sūra* 83:1-3), or when he objects from the outset to usury (*sūra* 30:39). However, these prescriptions, including the prohibition of wine are religious and moral commandments rather than pieces of formal legislation.

f. Muslim tradition asserts that the prohibition of wine came about because of divine intervention and over a relatively short period. In support of this, it might be worth noting the Armenian chronicle apparently written in the 660s, and ascribed to Bishop Sebeos.¹⁷ The part of the story that concerns us here is said to be referring to events towards as early as A.D. 628:

‘At this time there was an Ishmaelite called Maḥmet, a merchant; he presented himself to them [i.e. the Arabs] as though at God’s command, as a preacher, as the way of truth, and taught them to know the God of Abraham...Maḥmet forbade them [i.e. his followers] to eat the flesh of any dead animal, to drink wine, to lie or to fornicate...’¹⁸

We see here representation of an early Muslim community with a few fixed precepts that remind us of a recognisable Islam (or for that matter any number of other groups claiming salvation through piety), including the prominence of the prohibition of wine.

However, judging from the volume of *ḥadīths* preserved in the canonical collections, and by al-Ṭabarī in his *Tafsīr*, there is little doubt that the *institutionalised* ban on drink, as I hope to show, came about over a longer period than most traditional and

¹⁷ Sebeos, *Histoire*, pp. 94-6 as cited in Patricia Crone and Michael Cook, *Hagarism: The Making of the Islamic World* (Cambridge, 1977), 6, 157, n. 36. The chronicle ends in A.D. 661 and, according to Cook and Crone, was “clearly written by a contemporary.” The account is “apparently based on testimony of eyewitnesses who had been held prisoner by the Arabs at the time of the Arab conquests.” *Ibid.*, 157, n. 36. Their opinion of its dating, its interpretation, and its value are, however, debatable.

¹⁸ Sebeos, *Histoire*, pp. 94-6, as cited in Crone and Cook, *Hagarism*, 7.

apologetic works attempt to convey. Furthermore the ban was solidified and defined only after much debate arising from the pious need to fully understand the revealed text.

Even then, the prohibition never completely penetrated all strata of Islamic (and here I include, if not emphasise, non-Arab) society, for there was much drinking of fermented mixtures amongst Muslims in certain classes in the heyday of Islamic culture (reflected in the wine-poetry discussed at length below). In the *Arabian Nights* it tends to be the princes and merchants who indulged,¹⁹ and as attested to in a multitude of miniature paintings from more or less 'Abbāsid times and especially from the 9th century *Ikhshīd* ("shining, brilliant") period in Samarkand (which hints as to an even earlier iconography).²⁰ Indeed, a curious phenomenon—considering the 'clear' koranic statement regarding God's ultimate position on the issue, as allegedly conveyed by the Prophet.

It shall be seen that the most intensive and problematic arguments concerning the koranic prohibition of *khamr* revolve around constituents—what is allowed and prohibited, and the philology used. As we shall see, some exegetes argued that only fermented liquids made from grapes was banned by the *Qur'ān*, so it was alright to get drunk on, for example, figs. Whatever its true nature, the prohibition is a vestige of a very early and important theological matter, the development of which did not square well with later orthodox positions banning any and all fermented mixtures by way of analogy.

¹⁹ Robert Irwin, *The Arabian Nights: A Companion* (London, 1994), 154. It is worth noting the fact that the *Nights* literature is a compilation containing elements inserted only as late as 200-300 years ago, and are thus of only peripheral importance to the topic at hand.

²⁰ See: C.E. Bosworth, "*Ikhshīd*," *The Encyclopaedia of Islam*, new edition, vol. III (Leiden 1986), 1060.

PART ONE

THE 'SEMITIC' AND INDO-EUROPEAN LITERARY BACKGROUND

a. Several Islamic institutions (including most especially the *ḥadīdī*) become more fully understandable only in the light of their parallels or antecedents in more ancient monotheistic literature.²¹ The Islamic prohibition of wine may thus be looked upon from a wider aspect, as Islam is not the only monotheistic religion that has taken a negative attitude towards fermented drinks.

Wine had been known to the Arabs since the earliest times, and within Arabic literature there is preserved memories of its legendary origin. It takes account, on the one hand, of those traditions linked to biblical characters such as Adam and Noah²² and on the

²¹ See: Bernard Lewis, "Ḥadīdī," *The Encyclopaedia of Islam*, new ed. Vol. III (Leiden, 1986), 31-33.

²² *Midrash Tanhuma*, tr. by John Townsend (N.J., 1989), 1:22, on Gen. 3:22 (ref. to Adam and the "tree of life"), p. 15; 2:20, on Genesis 9:18 (ref. to Noah), p. 50-52. See also "Khamr" (part II "As a Product"), *Et*², s.v. (J. Sadan). The biblical story of Noah's first practical act was to *profanely* (*vayakhel* which also means "he began") plant a vineyard (*vayita' karem*), immediately after which he was made to become exceedingly drunk, so much so that he revealed his nakedness. Hence, Rashi's comment: 'Noah made himself profane, degraded himself. He should have planted anything but the vine.' "Scripture, thus shows in this narrative what shame and evil can through drunkenness befall even a man like Noah, who was otherwise righteous and blameless before God. Some commentators, however, explain that as Noah was the first to cultivate the vine, he was ignorant of the intoxicating effect of its fruit" (S.D. Luzzatto [1800-1865] the Italian Hebraist and commentator, as cited in the *Pentateuch and Haftorahs*, ed. by J.H. Hertz, second ed., London, 1971, 34). The question may be asked whether the former prophets' actions contradict the principle of *'isma* (infallibility, immunity from sin), a relatively late principle, according to which prophets could not logically commit a sin, even one which would become a sin only in the days of Muḥammad (See: E. Tynan, *Encyclopaedia of Islam*, new ed., vol. IV [Leiden, 1990]). This is, however, beyond the scope of this paper.

other hand, of the Aramaic-Syriac extra-Biblical tradition, symbolising ancient cultures inherited by the medieval Muslim world.²³

b. In order to place the Islamic prohibition within a cultural framework—and in so doing, provide prophetic precedent—according to the Hebrew Bible, the Nazarite who had wholly devoted himself to God had to abstain from wine and spirits:

‘He shall separate himself from wine and strong drink, and shall drink no vinegar of wine, or vinegar of strong drink, neither shall he drink any liquor of grapes, nor eat moist grapes, or dried. All the days of his separation shall he eat nothing made of the tree, from the kernels even to the husk.’²⁴

The Nazirites were those who consecrated themselves to God, taking the vow of a Nazirite, and the rules for it are set forth in Numbers 6:1-21. During this period of consecration, the *nazir* was to abstain from all fermented drinks and keep the hair uncut amongst other things. The practice was certainly known in New Testament times. St. Paul was made to complete a vow of this kind at Cenchreae (Acts. 18:18).²⁵ However, the law in Numbers codifies a very ancient custom and also reduces to a contemporary vow something that had originally been a consecration for life.

According to Amos (2:11-12), God raised up prophets and Nazirites in Israel, but it was the people who made the Nazrites drink wine. Here, the Nazirite is not a person who has taken a vow, but a man possessed of God-given qualities, a life-long state resulting from God's call, whom He separated from the realm of profane things. The external symbols of this separation are the various things forbidden to the Nazirite; in Amos, only abstaining

²³ “*Khamr*” (part II), *EL²*, s.v. (J. Sadan). One version links the origin of wine to the two great civilisations that were neighbours to Islam, that of Rum and that of India (al-Mas‘ūdī, Abū ‘l-Ḥasan ‘Alī [d. 956], *Murūdj al-dhahāb*, II [Beirut, n.d.], 88-92).

²⁴ Numbers 6:3-4.

²⁵ Roland De Vaux, *Ancient Israel: Its Life and Institutions* (Great Britain, 1976, first published 1961), 466, 467.

from wine is mentioned, but in Numbers 6:3-4 the prohibition extends to everything produced from the vine. The only biblical story which speaks of a particular Nazirite is the story of Samson. Even before he was born, his mother had to abstain from fermented drink, because the child she was to bear would be a 'nazīr of God'; Samson himself was to follow the same rule.

An extension of the usage of the term *nazīr* can be seen in the application of the word to vineyards which were not pruned in sabbatical or jubilee years (to this day in modern Israel) when the seeds were allowed to grow without hindrance (Lev. 25:5-11).

The same rules regarding abstention of fermented drink are applied to the Priest before administering the sacred rites (connected to the Temple ritual):

'Do not drink wine or strong drink, you, or your sons with you, when you go into the tabernacle of the congregation, lest you die: It shall be a statute forever throughout your generations.'²⁶

Maimonides' (A.D. 1135-1204) relevant comments on wine restrictions in *The Guide of the Perplexed*, are instructive as they provide an insight into a Jewish philosopher's reasoning—within an Islamic environment—regarding the status of wine within Revelation. Although Jewish theologians did not copy the ideas found within the Muslim theological realm, it is possible that they adopted various Islamic philosophical ideas if they fitted into internal Jewish theological arguments:

'The reason for Nazaritism (as referred to in Num.) is obvious. It consists in bringing about abstinence from wine, that has ruined people in ancient and modern times. 'Many strong men have been slain by it' (Prov. 7:26). 'But they also have erred through wine...the priest and the prophet' (Isa. 28:7). In the law about the Nazirite we notice even the prohibition, 'he shall eat nothing made of the vine tree' (Num. 6:4), as an additional precaution, implying the lesson that man must take of wine only *as much as is absolutely necessary* [probably for medicinal purposes. Emphasis added throughout texts is always mine, P.L.]. For him who abstains from

²⁶ Leviticus, 10:9.

drinking it is called 'holy'; his sanctity is made equal to that of the high-priest, in not being allowed to defile himself even to his father, to his mother, and the like. This honour is given him because he abstains from wine.²⁷

The ideal which the Prophets exalted, but never tried to put into practice was actually carried out by a group called the Rekhabites. We know of them chiefly through the Book of Jeremiah. To give a lesson to the people, the Prophet invited the members of Rekhab's family to the Temple, and offered them a drink of wine. They refused it, saying that their ancestor Yonadav, son of Rekhab, had given them this command:

'Neither you nor your sons shall ever drink wine, and you must not build houses, or sow seed, or plant vines, or own property. On the contrary, you are to dwell in tents all your life, so that your days may be long in the land where you live as aliens. Thus have we obeyed the voice of Jonadav the son of Rekhab our father in all that he hath charged us, to drink no wine all our days, we, our wives, our sons, nor our daughters. Nor to build houses for us to dwell in: neither have we vineyard, nor yield nor seed.'²⁸

This age-old fidelity to the commands of their ancestors is held up as an example to the Jews who do not obey the word of God.²⁹

c. Like the Hebrew priests, the Nabataeans, according to a remark by Jerome of Cardia, similarly abstained from wine, in the late fourth century B.C.,³⁰ and one of their

²⁷ Maimonides, *Guide of the Perplexed*, tr. Shlomo Pines (Chicago, 1963), chapter XLVIII, 600-601.

²⁸ Jeremiah, 35:5-9.

²⁹ De Vaux, *Ancient Israel*, 14-15.

³⁰ Diodorus Siculus, 19:94, as cited in Kenneth S. Sacks, *Diodorus Siculus and the First Century* (USA, 1990), 25; Crone and Cook, *Hagarism*, 157, n. 38.

gods is called in their inscriptions "the god who drinks no wine."³¹ It is interesting to compare the passage of Jeremiah to the remark found in Jerome:

'It is a law among them not to sow corn, or plant fruit trees, not to drink wine or build a house; whoever does so is punished with death.'³²

In these two very similar passages, one finds the age-old contrast and tension between nomadic life and the life of a settled farmer.³³

d. The theme of these biblical stories—including Noah, Lot (Genesis 9 and 19) as well as of the book of Proverbs (23:30-35) is opposition to drunkenness. Further, according to the Talmud, Nadav and Avihu were killed because they were drunk (*Leviticus Rabbah* 20:9 and parallels), drunkenness leads to forbidden sexual relations (*Ketuvot* 65a and *Numbers Rabbah* 10:3) and "there is nothing that causes a person greater lamentation than wine" (*Sanhedrin*, 70b). As a result, it is difficult to fathom the primary talmudic source related to drinking on the feast of Purim (*Megillah* 7b):

'Rava said: "A person must get drunk on Purim until he cannot distinguish between 'cursed be Haman' and 'blessed be Mordechai'. Rabbah and R. Zeira made a Purim feast together. They got drunk. Rabbah stood up and killed R. Zeira. On the morrow, Rabbah prayed for him and revived him. The following year, Rabbah said to him: "Come, let us celebrate the Purim feast together!" R. Zeira replied: "Miracles don't happen every day!"'

³¹ According to Crone and Cook (*Ibid.*): "There may also be here a trait of ascetic Judaism (cf. the Rechabites, the Nazirites, and St. John the Baptist), and one which appears suggestively as being adopted by many Jews against the wiser counsels of the rabbis in the period after the destruction of the Temple" (referring to the Babylonian Talmud, *Bava Batra*, ch. 60b).

³² In Diodorus Siculus, 19:94, as cited in Sacks, *Diodorus Siculus*, 25.

³³ De Vaux, *Ancient Israel*, 15

Rava's statement begs an explanation. R. David Abudraham explained that the Sages required drinking on Purim since all of the miracles in the days of Ahashverosh occurred at drinking parties (*Sefer Abudraham*, pp. 209-210). On the other hand, Rava was a vintner (*Berakhot* 56a and *Bava Metzia* 73a) and clearly liked to drink wine (*Pesahim* 107b).

Whatever the simple meaning is, it is clear that the *halakhic* authorities throughout the generations felt very uncomfortable with Rava's demand to get drunk on Purim, and therefore each scholar (*posek*, "jurist") tried to circumvent the requirement. Here is a sampling of their rulings:

1. R. Ephraim (North Africa, 11th cent.) claimed that the story comes to cancel out Rava's statement and therefore one should not get drunk on Purim.
2. R. Alexander Zusslin Hacoheh (Germany, 14th cent.) explained that "cursed be Haman" equals "blessed be Mordechai" in gematria (mathematical association with the Revelation)- they both add up to 502! - and it requires less wine to become that intoxicated.
3. R. Yosef Haviva (Spain, 15th cent.) wrote that one should say funny things so that the beholders will think that one cannot distinguish between "cursed be Haman" and "blessed be Mordechai."
4. Maimonides (Egypt, 12th cent.) rules that "he drinks wine until he gets drunk and falls asleep...", and this ruling was adopted by Rabbi Moshe Isserles in the *Shulkhan Arukh* (Poland, 16th cent.).
5. R. Natanel Weil (Germany, 18th cent.) explained: "'until'—up to and not including, because otherwise he would reach the drunkenness of Lot".
6. R. Aaron of Lunel (Provence, 14th cent.) commented "that he should drink more than his normal custom in order to rejoice greatly and to make the poor rejoice and he shall comfort them...and that is true joy." This is the most original interpretation: that the purpose of drinking on Purim is to help us fulfil the *mitzvah* of *mattanot la'evyonim* (gifts/alms to the poor) and not simply to get drunk.
7. Finally, R. Menahem Hame'iri (Provence, 14th cent.) said: "In any case, we are not commanded to get drunk ...for we were not commanded to engage in debauchery and foolishness but to have heartfelt joy which will lead us to

the love of God and to gratitude for the miracles which he performed for us".³⁴

As we shall see, both the Jewish and Muslim pious scholars were discussing and debating exactly the same issues and problems stemming from the desire for the full understanding of a problematic revelation and its related Oral tradition/*Ḥadīth*.

e. A similar attitude to wine involves that of the Manichaean form of Christianity. Its disciples were divided into two classes; one, the 'elect', and the other, the 'hearers'. The 'elect' were compelled to submit to a rigorous abstinence from all animal food and intoxicating drink amongst other restrictions. The discipline appointed for the 'hearers' was of a milder kind,³⁵ reflecting the same type of problems Muḥammad was related to have encountered when attempting to impose asceticism upon his own community of Believers.

Similarly, abstention from wine belonged to the rule of many Christian monks, and the abstention from wine—as a form of religious asceticism—is said to have been practised by several of the pagan *Quraysh* of Mecca.³⁶ Ṭabarī, in his comments on *sūra* 5:90, narrates that the prohibition (in fact abstention) of women, sleep and meat "upon the Companions of the Prophet was similar to (that of) the (Christian) priests and monks."³⁷

All this has its roots in remote Semitic antiquity that ascribed a demonic character to wine and spirits (combined with the ancient idea that bodily abstinence was regarded as a

³⁴ I am indebted to David Golinkin, for sending me his article "Purim: To Drink or Not to Drink", *Schechter Institute of Jewish Studies*, vol. 2, no. 4 (Jerusalem, Feb. 2002).

³⁵ See: G. Bühler (tr.), *The Laws of Manu: Translated with Extracts from Seven Commentaries* (Oxford, 1986), chaps. IV & V.

³⁶ See: D.S. Margoliouth, *Mohammed and the Rise of Islam* (Great Britain, 1906; 1927 edition), 43.

³⁷ al-Ṭabarī, *al-djāmi' al-bayān*, vol. 7, p. 31, line 27.

means of purification of the soul on its way to Paradise). Doubtless, the same is true for music, especially singing, which was also, we are told, disapproved of by the Prophet.³⁸ It is not improbable that feelings of this kind may have worked, with other more local motives (involving discipline and social changes), to induce the prohibition of wine and wine-drinking.

f. However, the Hebrew Bible also speaks of wine as a gift of God to humanity, often along with other products of the soil, corn and (olive) oil. In one such passage (Psalm 104:15) it is described as 'wine which makes glad the heart of man'. From the New Testament we know that Jesus made use of, if not frequently drank, wine.³⁹ Further, both Jews and Christians make use of wine in religious ceremonies.⁴⁰ This appreciation of wine

³⁸ That a discordant voice is not good is apparently expressed in *sūra* 31:19: 'And lower your voice, for the harshest of sounds without doubt is the 'honking' of a donkey.' For an overview of the attitudes of Muslims to music see "Music" in Edward William Lane, *The Manners and Customs of the Modern Egyptians* (Everyman edition, London, n.d.), especially pp. 359-361, as well as R. Sellheim "Samā", *El²*, new ed., vol. VIII, Leiden, 1993, p. 1018. There is a similar disposition towards what was interpreted as 'dancing': *wa 'la yaḍribna bi'ardjulihinna li'yu 'lama ma yukhḍfina min zīnātihinna* (end *sūra* 24:31).

³⁹ See esp. John 4:46, Luke 7:34, Mathew 11:19, 1Tim. 5:23. Although it may be noted that Jesus is made to frown upon wine in other verses e.g. Mat. 27:34, Mark 15:23, Luke 1:15, Romans 14:21.

⁴⁰ There is also the curious matter of the Nosairis who used wine as an integral part of *Islamic* liturgy. The sect, later known as the 'Alawites of French Mandated Syria, traces its roots to the eleventh 'Alid *Imām*, Ḥasan al-'Askarī (note in the name the coincidental derived root *s.k.r.*, *sakar*, 'wine!'), who we are told died in A.D. 873. Their religious system combines Christian, pagan and *Shī'a* elements. With the Nosairis, 'Alī became a divinity. Although Nosairism adopted several *Shī'a* festivals, more unexpected, in fact unique in Islam, is their adoption of the great Christian festivals and Eastern liturgy. Included in the sect's ritual are candles, incense, fragrant plants—and wine. Indeed, some prayers are recited *over* cups of wine, after which the *imām* mixes a portion of his cup of wine with that of the attendant, and at this signal all the congregation empty theirs, and intone religious chants. The Nosairi liturgy mentions 'the consecration of the wine'; after which it adds: 'The greatest of God's mysteries is that of the body and blood of which Jesus has said: "This is my body and my

is not completely absent in the *Qur'ān*, considering the rivers of wine in Paradise (*sūra* 47:15), and that in wine there are 'benefits' (*sūra* 2:219, not forgetting of course that the sin is greater).

g. To an observer it is strange that what was permitted to other 'Peoples of the Book' (*ahl al-kitāb*, i.e. primarily, we are told, Jews and Christians),⁴¹ and indeed seen by them as a gift from God, should have been forbidden to Muslims. Is the prohibition believed to have been derived from punishment for some fault, such as excessive drinking of alcohol and consequent unruly behaviour (for which those of other religions it could hardly have been absent)? This point will be further discussed, but in the meantime we note that there is something queer about a legal prohibition that has no precedent in earlier Revelation (at least that revelation recognised in one form or another by the *Qur'ān*).⁴²

blood; eat and drink of them. For they are life eternal." The wine is called '*abd al-nūr*', because in it God has revealed Himself. The Nosairis have integrated into their liturgy borrowings and ceremonies eliminated from the religious practices of Islam, not excepting those sects furthest removed from koranic orthodoxy. See H. Lammens, *Islam: Beliefs and Institutions*, tr. D. Ross (London, 1967), 174-175.

⁴¹ See: G. Vajda, "Ahl al-kitāb", *Encyclopaedia of Islam*, new. ed., vol. I (Leiden, 1986) 264-6.

⁴² In trying to account for the Christian liturgical wine ritual, it is instructive to consider J. G. Frazer, in his classic *Golden Bough*. He explains why one should desire to partake of the flesh (or blood) of an animal or man whom he regards as divine. "By eating the body of the god, he shares in the god's attributes and powers. And when the god is a corn-god, the corn is his proper body. When he is a vine-god, the juice of the grape is his blood; and so by eating the bread and drinking the wine the worshipper partakes of the real body and blood of his god. Thus the drinking of wine is not an act of revelry, it is a solemn sacrament." James G. Frazer, *The Golden Bough* (New York, 1953, first published, 1922), 578. Little wonder then that Muḥammad as portrayed in the Islamic tradition rejected the polytheistic symbolism inherent in the role of wine within Pagan as well as Christian ritual.

h. Although in 'Semitic' culture wine may be considered a blessing, as well as rigorously disapproved of in ritualistic terms, nowhere have intoxicating drinks been elevated to a *loftier* position of religious significance than among the Indo-Iranian peoples. They knew both a worldly intoxicant known as *sura* in India and *hura* in Iran, and a sacred drink (Indic *soma*, Iranian *haoma*), the latter of which had the status of a deity with a complex set of symbolism. This beverage had a powerful hallucinogenic effect and was an intensifier, which enhanced all human capabilities to any who partake in it. *Soma* and *haoma* were considered nothing less than the universal life essence, the fluid that invigorates all living beings. Moreover, the sacrificial offering of this elixir came to be regarded as the means to effect circulation of life energy throughout the cosmos.⁴³

A consequence of the Christian and pagan traditions partly accounts for the phenomenon that wine comprises a special place within the literary works of the Muslim mystics. There, notwithstanding the koranic prohibition, it is considered a symbol of ecstasy (noting the same conflict between the blessed and the harmful in the Hebrew Bible). In this point it seems that the mystics took over a combination of the languages (i.e. the institutionalised expression of the Divine) of their non-Christian, and Christian predecessors—for as early as Philo of Alexandria, ecstasy is compared to intoxication.⁴⁴

i. Finally, not only did the spread of Islam encounter Persian/Iranian values, ideas and literature, but also encountered Greek philosophy. Indeed, the intellectual life of Islam commonly bowed to the Greek spirit of expression:

Whether the *Ḳur'ān* is from eternity, I do not enquire.
Whether the *Ḳur'ān* was created, I do not know...

⁴³ *The Encyclopedia of Religion*, Mircea Eliade (ed.), vol. 11 (New York, 1987), 122.

⁴⁴ Philo of Alexandria, *De Vita Contemplativa* (*About the Contemplative Life*, ed. Fred C. Conybeare [Oxford, 1895]), as cited in "*Ḳhamr*", *EI*², s.v. (A.J. Wensinck).

The drinker, whatever the case,
Has a fresher glimpse of God's face...⁴⁵

Many values ascribed to the Islamic institutionalisation of the wine prohibition can be traced to Greek philosophy, as of course it was preserved in Arabic texts. A few fragments may suffice to illustrate a Greek 'institution' reflecting on the values of wine (as well as music and women) which, as are easily recognisable, Islam took over, gave an Islamic flavour, and adopted as its own:

1. 'Anarcharsis said: "Vines bear three kinds of grapes: grapes of pleasure, grapes of intoxication, and grapes of folly."' ⁴⁶
2. 'Ammonius said: "Three things alone can harm a ruler, namely, drinking wine, listening to music, and conversation with women. All three ruins the mind."' ⁴⁷
3. 'Sophocles said: "He who achieves power together with authority is like a drunkard if he has no intelligence. He despises beauty, avoids justice, is extremely boastful and vain and does the ugliest things. When he becomes poor and sober again, he knows he was intemperate and had abandoned truth and justice, and he is clearly aware what his intoxication meant."' ⁴⁸

This heritage carried over and was reflected even in the writings of the Muslim rationalist Muḥammad Ḥusein Haykal, expressed in the 1930s when he states:

"The Qur'ān, seeking to preserve the jurisdiction of reason in morality, thus has kept morality immune to all that might vitiate its judgement on matters of faith or morals. Consequently, it has regarded alcohol and gambling as anathema...Alcohol dissolves reason and wealth, to use the terms of 'Umar ibn al-Khattab when he

⁴⁵ Goethe, West-östlicher Divan, as cited in Franz Rosenthal, *The Classical Heritage in Islam* trans. by E. and J. Marmarstein (Great Britain, 1975, originally published Germany, 1965), 13.

⁴⁶ Preserved by Ibn Durayd b. al-Ṣimma (b. 530) in al-Aghānī, ix, no. 28, as cited in Rosenthal, *Classical Heritage in Islam*, 127.

⁴⁷ *Ibid.*

⁴⁸ Preserved by Ibn Durayd, no. 28, as cited in *Ibid.*, 137.

prayed that God might reveal His judgement in its regard [I shall return to this formulation in the coming pages P.L.]. It is natural for the mind to err in its judgement when intoxicated..."⁴⁹

Comparative religion is certainly to be thanked for providing us with so many examples of the practice and motivation regarding the prohibition or elevation of wine drinking. However, the concern here is to identify as exactly as possible the literary remnants describing the specific circumstances under which the great institution⁵⁰ of the prohibition came into being and the role the Prophet, the man who had perhaps the most profound effect of any individual on the history of wine, was perceived to have had in it. This, by use of the *Qur'ān* (together with its exegesis), traditionally accepted (at least by common consensus/acquiescence, *idjmā'*) to be contemporaneous with Muḥammad and his early followers, and therefore, we are told, indicative of their beliefs and values.

PRE-ISLAMIC POETRY: PROVIDING THE SOCIAL CONTEXT

a. For the purpose of finding any such meaning, it would be of value to know whether the Arabs had been familiar with abstention from wine before Muḥammad. Any attempt to answer this question is hampered by the fact that, except for the *Qur'ān*, all information about pre-Islamic Arabs is contained in sources put down in writing at least one hundred and twenty years after the advent of Islam. The real picture might be distorted by the passage of time as well as by the natural inclination of the Muslim pietists to depict the past as they would have imagined it in line with their own pious ideals.

⁴⁹ Muḥammad Ḥusein Haykal, *The Life of Muḥammad* (Beirut, 1983), 545.

⁵⁰ One may consider the matter an "institution" due to the fact that the prohibition of wine is 'institutionalised.'

b. The pre-Islamic poets⁵¹ boasted of their feats in wine drinking. Although (as we have seen in the *Qur'ān*) water is omnipresent in the poetry, it is rarely “merely” drunk, rather, it is used in a far more lofty context representing fertility, or used metaphorically for generosity and blessing.⁵² Indeed, the praise of wine remained an inevitable part of Arabic poetry to such a degree that even Ḥasan b. *Thābit*, known as the first Muslim poet and the chronicler of Muḥammad and of his victories, is made to say:

‘If we commit unseemly deeds—whether a quarrel or railing—we blame the wine (*khamr*) (which we drank to excess). We go on drinking it, which turns us into kings.’⁵³

As Goldziher points out: “although the genuineness of the poem is, of course, doubtful, the fact remains that wine-drinking, related in a religious poem, was not edited out, perhaps not even considered out of place in the formative period of the development of the Community. Only later attempts were made to explain away the existence of the poem that gave offence to the newly dogmatised Muslim pietists. They were concerned to prove that the effects of wine had changed with the changing times. Thus, they postured, during the period of paganism it might have had those beneficial effects attributed to it by the old poets (surely reflecting those attitudes from pagan society); but since God’s law of condemnation it had

⁵¹ Including here the later (more dogmatic) pious writers tending to project certain ideals of their own time backward (whether these ideals be positive or, as in this case, negative) in order to provide a measure of authority.

⁵² “*Khamriyya*,” *El²*, s.v. (J.E. Bencheikh).

⁵³ Ibn Ishāq (ca. 85-150/704-67), edited by Ibn Hishām (d. 218/833), *Sīrat Rasūl Allāh*, ed. F. Wuestenfeld (Goettingen, 1858), 829, column 1, line 6. It should be pointed out that the above ‘social comment’ is presented in a poem composed about the conquest of Mecca, according to traditional chronology.

to be the cause of all laxity.⁵⁴ This idea was expressed as a tale, which was probably not unintentionally attributed to the same Ḥasan, the poet of the transition from paganism to Islam, and thus deemed most suited to be the carrier of the idea of the theologians.”⁵⁵

c. So, Muḥammad was allegedly born into one of the Middle Eastern cultures that from earliest times had been depicted as using wine, an idea familiar to the pre-Islamic Arabs.

Although Arabian vintages could never have been of any great quality, wine, locally grown or imported from more fertile regions (Syria, Iraq, or the Yemen), was part of, we are told, the daily life of sixth-century (pre-Islamic) Makka. Since the Arabs had no real tradition of viticulture (including those who settled in agricultural regions), wine was considered a ‘luxury-item’, since due to poor soil quality, wine made from grapes had to be brought from considerable distances, and one may assume, was thus expensive.⁵⁶

According to what is described as early Arabic poetry, the wine-trade is chiefly connected with Christians and Jews, and one may assume that the places in which this trade was undertaken led to a circulation of Christian and Jewish ideas among the pre-Islamic Arabs. After the birth of Islam, this commerce was must have been practised exclusively by these two communities, as a result of the koranic prohibition.⁵⁷

⁵⁴ Wine and games of chance were declared by *Ḥadīth* as “beneficial before the prohibition, but in them was sin (only) after they were prohibited.” al-Ṭabarī, *al-djāmi' al-bayān*, vol. 2, p. 361, line 4. Here again we meet with the concept of *‘iṣma*.

⁵⁵ Quoted with slight alterations: Ignaz Goldziher, *Muslim Studies I*, trans. C.R. Barber and S.M. Stern (London, 1971), 31.

⁵⁶ As W.R. Smith observes, it is perhaps “for this economic reason that opposition to the widespread use of wine found distinguished advocates before Muḥammad.” William Robertson Smith, *The Prophets of Israel and Their Place in History to the Close of the Eighth Century* (Edinburgh, 1895), 388, n. 16.

⁵⁷ “*Khamr*” (part II), *EJ2*, s.v. (J. Sadan).

It is against both the "Semitic" and Classical backgrounds that one has to evaluate the testimony of the *Qur'ān* and the "Oral Tradition", the exegetical *Ḥadīth*, concerning the establishment and institutionalisation of the prohibition of 'wine'.

PART TWO

THE KUR'ĀN AND ITS PLACE IN THE EVENTUAL PROHIBITION OF WINE IN ISLAM

a. In the earliest times of the Muslim community, limitations the divine prohibition of fermented mixtures imposed met powerful resistance from Arabs who, it is said, indulged in moderate drinking as a natural part of pre-Islamic society and culture. It is related by Muslim chroniclers that pre-Islamic Arabs found "nothing less to their taste than asceticism, and sang of their national heroes' use of wine, and of their generosity in sharing it out."⁵⁸

According to Goldziher, the earliest attempts to introduce asceticism, one of whose manifestations was abstention from wine, to the pagan Arabs were in vain, "not going well with their inherent character." Indeed, it was the prohibition of wine, which he asserts was remembered as what "encouraged virtue, honour and generosity," that was incomprehensible to the true Arabs.⁵⁹ This may reflect the traditional idea that although "self-castigation is best suited for intercession and for the seeking of God's pardon,"⁶⁰ the prohibition of wine was not in Muḥammad's program at the beginning. In *sūra* 16:67 we even find "strong drink" praised as one sign of God's grace to mankind, one of the good things of the earth (along with water, milk and honey):

'And of the fruits of the date-tree and the grape (-vine), you make (from it) a strong drink (Ar. & Heb. *sakar*⁶¹) and good nourishment. Indeed, in it is a sign for a people who understand.'

⁵⁸ As cited in Goldziher, *Studies* I, 29.

⁵⁹ *Ibid.*

⁶⁰ Which, according to Goitein, was well known in Arabia since ancient times. S.D. Goitein, "Ramaḍān, The Muslim Month of Fasting," *Studies in Islamic History and Institutions* (Leiden, 1966), 99.

⁶¹ I thank Professor Bernard Lewis for this observation. As Dr. Richard Kimber rightly points out, this verse is the only instance in the Kūr'ān where the term *sakar* appears. Every other reference to fermented drink uses the term *khamr*. *Sakar* is found in Proverbs 31:6 "tmi *shakhar* l'oved v'yayin

Based on this revelation, undoubtedly reflecting a continuation of the local custom of fermenting dates and grapes, the Persian-Arab theologian and religious philosopher Fakhr al-dīn al-Rāzī (d. A.D. 1209) in his incomplete *Tafsīr* recalls that the “Muslims drank such drinks, since they were allowed (to)[or at least not explicitly prohibited].”⁶² But, as we shall see, the consequences of drunkenness are said to have led Muḥammad to change his attitude.

b. Persons who were aware that the practice of some ascetics forbade their use of wine had, as it appears in the Qur’ān, apparently addressed questions on the subject of its consumption to Muḥammad. The Qur’ān’s first answer was a compromise, in which the uses of *khamr* (which were coupled with “arrow-shuffling” [that may or may not be some form of gambling]) were considerable, though the injury produced by that was great, even greater than the benefit. Thus, though ‘wine’ had been mentioned as a delight of Paradise, its evil effects were also realised, now in a quasi-legal sense.⁶³ The first revelation giving vent to these feelings was traditionally *sūra* 2:219:

l'marai nefesh” (“Give strong drink to the servant [of God] and wine to him that be bitter in his soul”). There is here a clear differentiation between wine and liquor. In Genesis 9:21, Noah “*vayashat ma'ha'yayin va'yishakher*” (“he [Noah] drunk wine and became intoxicated”). In the Talmud, Tractate *Ketuvot* (*chet*, 8) it is written “*hayu shotin u'mishtakhrin*” (“They would drink and become drunk” [equivalent to 10th form Ar.]). In modern Hebrew the construct form translation of “pub” is *beit ha'shkhar*”.

⁶² Fakhr al-dīn al-Rāzī, *Mafātiḥ al-ghayb kitāb al-tafsīr al-kabīr* (“The Keys of the Hidden: The Great Commentary”), 16 vols., plus index (Beirut, 1990), on *sūra* 2:219, vol. 6, p. 35, line 13. In this work, al-Rāzī brings into his exegesis philosophical thought and contains his independent suggestions for solutions to problems surrounding inconsistencies in jurisprudence.

⁶³ On the contrary, the “benefits” of wine-consumption were not specified. It would seem that the advantageous use of wine, for whatever reason, was so obvious to the proto-Islamic audience, that no need was felt to express any further explanation regarding the matter within Revelation.

‘They will ask you [i.e. Muḥammad] concerning wine (*khamr*), and arrow-shuffling [*maysir*, i.e. traditionally gambling and/or the seeking of oracles from the deity⁶⁴]. Say: “In (the two of) them there is great sin and (also) uses for men, but the sin (of the two) is greater than the usefulness (of the two of them).”’

It is not possible to know what people actually asked of the Prophet when they questioned him, since it is not dealt with in the Commentaries.⁶⁵ They may well have asked of the true character and nature of *khamr*, or whether it is possible to make use of it as a medicine, or whether it is sinful or permissible to drink it.⁶⁶ It is also interesting that wine and arrow shuffling are linked—both in sin and in “usefulness.” The usefulness of arrow-shuffling/gambling is a matter the Qur’ān (and its exegesis) does not endeavour to explain.

Looking at this particular verse in isolation, it is noteworthy that while wine-drinking is not looked upon as a positive action, neither could it be considered a prohibition of the substance(s). Rather than being a legalistic judgement, the verse is a moral expression suggesting a graduated social movement away from drunkenness, a perceived threat to the new socio-religious order.

This order may have been deemed necessary for the new sense of community (including a clear definition of the theological, ritual and sociological boundaries as distinct from other socio-religious groups) which the Prophet was trying to instil, and evidence of the values prevailing within the earliest community of Believers. However, the prohibition was not (yet) stated outright, nor any details stated expressly in the Qur’ān.

⁶⁴ In his comments on *sūra* 5:90, al-Ṭabarī defines *maysir* (as that) “of which you draw lots (*tatayāsarūna bihi*),” either a reference to a form of gambling, or to something resembling the use of oracles (although the term should then have been *azlām*). al-Ṭabarī, *al-djāmi‘ al-bayān*, vol. 7, p. 32, lines 4-5. However, in his comments on *sūra* 2:219, he defines *maysir* as *ḳimār*, “gambling.” *Ibid.*, vol. 1-2, esp. p. 357, line 15, and p. 358, line 2.

⁶⁵ The phrase *yasalūnaka* occurs only fifteen times throughout the koranic text.

⁶⁶ Refer to al-Rāzī, *Mafātīḥ al-ghayb*, vol. 6, 35, lines 7-8 for a memory of general questioning of the Prophet. Note must be taken that my source does not refer to the specific medicinal use of wine.

c. Arising from an understanding of this verse that 'wine' was not explicitly prohibited, the commentators on the *Qur'ān*, seeking to understand, and fill out the specific circumstances of the revelations, relate how Muḥammad's companions held drinking-parties which led to faults being committed in the ritual prayer, a defining characteristic of the new Community:

'Abd al-Raḥmān ibn 'Awf produced food and drink, and he called one of the Companions and they ate and drank until they were drunk (*sukarū*). Then they approached the evening prayer and (the Companion) did recite (falsely): "Say; O unbelievers, I worship [instead of: 'I do not worship...' P.L.] what you worship, and you worship [instead of: 'do not worship...' P.L.] what I worship, and I worship what you worship [instead of: 'I do not worship...' P.L.], and to you your religion and to me mine."⁶⁷

'And he did not render this verse well, and did not (even) know what he was reading (due to drunkenness).'⁶⁸

This episode was made to have had an effect upon the new Prophet, considering his traditional sensitivity to political or religious polemics against him. Thus, due to Muḥammad having disagreeable experiences with followers who came drunk to some form of public worship, the first revelation issued expressing this is traditionally connected to *sūra* 4:43:

'O you of those who are believers, do not draw near to prayer when you are drunk (*sukara*) until you know what you are saying...'

⁶⁷ al-Ṭabarī, *al-djāmi' al-bayān*, vol. 4, p. 95, lines 21-24. In brackets is the incomplete koranic *sūra* 109 (without verse five: "Nor will you worship that which I worship"). For a variation on the above tradition within the framework of abrogation also see *Ibid.*, vol. 1-2, p. 363, lines 1-9.

⁶⁸ *Ibid.*, vol. 7, p. 33, lines 21-22. This entire event assumes of course that the koranic verse in question (*sūra* 109) was indeed originally read as it was later redacted when these *ḥadīths* were collected.

Sir William Muir (in characteristic manner) points out rather laconically that this injunction "...may be viewed as additional evidence of the lax manner in which the devotions of the Muslims were at first performed."⁶⁹ However, on the contrary, it also reflects the aspirations of the earliest proto-Islamic community, at the outset of its formative period. One may comment that the inclusion of the above verse into canonised form (i.e. into the *muṣḥaf*, by way of *idjmā'*) reflects an historical reality, as it certainly does not reflect well upon the Companions, whom tradition relies on for their trustworthiness regarding the conveying of accurate prophetic behaviour.

Although one may comfortably assert that the number of wine-drinkers amongst the Community decreased after the above revelation was issued, it could still be argued that the verse *allows* for alcohol consumption, but not near the 'prayer', of which one could approach only *after* one had recovered.⁷⁰ After all, according to traditional sources filling out the circumstances of Revelation, it appears that drunkenness often became a cause of scandal, alongside gambling which also incurred Muḥammad's condemnation. For example, Tradition has not refrained from graphically describing how Ḥamza b. 'Abd al-Muṭṭalib, Muḥammad's uncle, in a fit of drunkenness mutilated 'Alī's camels:

'Alī b. Abū Ṭālib reported: "There fell to my portion along with the Messenger of God, an old she-camel from the battle-spoils of Badr. The Messenger of God provided me another camel...And Ḥamza b. 'Abd al-Muṭṭalib was engaged in drinking (*sakar*) in a house in the presence of a singing girl, singing to him. She

⁶⁹ Sir William Muir, *The Life of Mohammed From Original Sources* (Edinburgh, 1923, first published, 1861), 333.

⁷⁰ Indeed, al-Ṭabarī relates that after the above verse was revealed "they did not cease doing this [i.e. either coming to prayer drunk, or just generally drinking], until God revealed (the prohibition of *sūra* 5:90)." Ṭabarī, *al-djāmi' al-bayān*, vol. 7, p. 33, lines 24-25. This prohibition "was revealed not long afterwards." *Ibid.*, p. 34, line 7. This is in distinction to another of Ṭabarī's *ḥadīths* attributed to a Companion after the warning not to approach prayer while drunk: "O Prophet, we shall not drink it (i.e. wine) when we approach the prayer." Ṭabarī, *al-djāmi' al-bayān*, vol. 2, p. 361, lines 25-26.

said: Ḥamza, raise to slaughter the fat she-camels. Ḥamza attacked (them) with the sword and cut off (their) humps and tore off their leg-muscles, and then removed the livers (of the beasts)...”⁷¹

In all fairness to Ḥamza, his drinking episode had (it is traditionally reckoned) occurred before the prohibition of alcohol had been issued. Nevertheless, according to traditional chronology, it is suggested that his conduct prompted one important innovation to the Prophet—the partial or absolute abolition of wine and other intoxicating substances.

d. It is traditionally related that Muḥammad at last perceived that the sanctions of the new revelation were too weak to enforce a middle course regarding his version of asceticism, for “only some abstained from drinking (wine, *khamr*),”⁷² and that the imposition of total abstinence would have been the only means by which the Prophet could seek moderation. To fill out the circumstances of this series of revelations, and provide some logical justification to a set of differing messages the revelations gave, the *fukahā*’ connected the disorderly scene in which Ḥamza and ‘Alī figured (and in which it is likely that the so-called arrow-game was not absent as a possible cause [see n. 80, p. 36]). Thus the chronological connection was created between the “earlier” half sanction and the absolute forbiddance.⁷³ The verse reads:

‘O believers, indeed wine (*khamr*) and arrow-shuffling, idols and divining-arrows are filth [i.e. sin], from (amongst) the works of Satan, so avoid it; perhaps you will be successful. Satan only wants to bring enmity and hatred between you regarding

⁷¹ Muslim ibn al-Ḥadīdjādī (d. 261/875), *Ṣaḥīḥ Muslim*, volume III, chapter 36: Kitāb al-Ashriba, traditions 1 and 2, (Mecca, n.d.), 1568-9.

⁷² al-Rāzī, *Mafātīḥ al-ghayb*, vol. 6, 35, line 13.

⁷³ The date is of course uncertain although the sections of the Qur’ān which traditionally reflect the Prophet’s activities in his native city of Makka do not contain any provision concerning abstention from wine, nor of fasting.

wine and arrow shuffling, and to stop you from the mentioning/remembrance of God, and from prayer. Then shall you not refrain? Obey God, and obey the Prophet, and beware...'⁷⁴

The above verse differs from what are traditionally known as "the early Makkan *sūras*" in that its outlook is slightly further afield, and the legislation more developed and aimed at communal continuity. Furthermore, one finds here in the final comment regarding authority that Muḥammad the Prophet is, along with God, to be considered a source of Law.

It will not pass unnoticed that in this last verse, the *Qur'ān* includes alcoholic drinks and idolatry in the same category, giving the prohibition a definite religious character (or at least puts the prohibition on a religious level), as opposed to a purely legal character (such as the rules for inheritance and family law).⁷⁵ Also gone is the uncertain state observed in 'previous' revelations on the subject, and which is similarly to be observed concerning the *qibla*, or the point towards which Muslims should turn during prayer, before Mecca was finally decided upon.

Further, this main verse upon which the prohibition of wine is based, does not speak of intoxication but of Satan using alcohol to cause enmity and hatred between people.⁷⁶ On this basis, it could be polemically argued that the ground for the prohibition of wine was that it led to hatred and enmity. If so, it could be further argued that where it did not lead to hatred and enmity, there was no need to consider it as forbidden. The fundamental question, of course, is about the ground for the prohibition of wine. It is usually said that the ground

⁷⁴ *sūra* 5:90-92.

⁷⁵ Although it might well be argued that Islamic law is religious in nature.

⁷⁶ Judging from various koranic statements, such as *sūra* 36:60-62 where Satan, appointed temporary god on earth, was made to have powers not unlike those of God, and with full freedom of choice (e.g. not to bow to Adam, etc.), it is clear that Satan (the *true* monotheist!) does not need the help of wine and games of chance, nor of idols and divining arrows.

is that wine causes intoxication, and by analogy this justifies the extension of the prohibition to all other alcoholic beverages.

e. We have seen that the *fuḳahā'* produced and connected certain stories to the koranic revelation in order to fill out the circumstances and thus understand better the particular meaning of any given koranic verse. However, there was no consensus on whether this or that story was the only one whereby the scholars could authoritatively understand the Revelation. For example, in addition to the described unruly incidents connected to the Prophet's decision to finally ban alcohol, the single verse upon which the prohibition of wine is based, was dictated, we are also told, as a *direct result* of an incident in Madīna when Muḥammad's disciples were drinking together after dinner.⁷⁷ One of his Makkan followers began to recite an uncomplimentary poem about the tribe of Madīna, when one of his Madīnan followers picked up a bone from the table and hit the Makkan on the head. Muḥammad was distressed and after prompting from 'Umar, asked God how to keep his disciples in order, again resulting in the final prohibition as the response:

'And others said: "This verse was revealed in the case of Sa'd ibn Abī Waḳḳās when he was quarrelling with a man (while two were) drinking. And his companion hit him a great hit with the jaw-bone of a camel and split his nose..."⁷⁸

"...Then one of the Helpers struck Sa'd with the jawbone of a camel and wounded him (with) a deep head wound, he (Sa'd) complained to the Messenger of God, and 'Umar said: 'God, give us a *final* statement concerning wine!'"⁷⁹

⁷⁷ Whereas we have previously seen another stream of tradition which states that the prohibition came about as a direct result of the incident regarding the confusion of wording in the prayer ritual. See: al-Ṭabarī, *al-djāmi' al-bayān*, vol. 7, p. 33, lines 21-22.

⁷⁸ *Ibid.*, lines 26-27.

⁷⁹ al-Rāzī, *Maḳāṭiḥ al-ghayb*, vol. 6, 35, lines 18-19.

Thus, a principal characteristic of the Muslim way of life arose out of a quarrel—which may or may not have been drunken.⁸⁰

Considering 'Umar's relationship to Muḥammad, and his authoritative place in the traditional formation of Islamic Law, one must consider that most important among those revelations revealed to Muḥammad as a result of his association with 'Umar included two with clear consequences in the realm of Muslim law. The first is the final prohibition of wine, which as we see came about after the clear intervention of 'Umar according to several *ḥadīth* traditions,⁸¹ and the second is the problematic case of stoning (adulterers) which according to 'Umar was originally part of the "Book of God" (the Qur'ān source, as opposed to the *muṣḥaf*, the Qur'ān document; or alternatively, the "Torah").⁸² Thus,

⁸⁰ Indeed, Ṭabarī makes reference to this when he writes: And others [i.e. other *ḥadīth* sources] said: "This verse (*sūra* 5:90, of the prohibition of wine and games of chance) was revealed...due to games of chance, and not due to (the effects of) wine." al-Ṭabarī, *Djāmi' al-bayān*, vol. 7, p. 35, lines 1-2.

⁸¹ See: al-Ṭabarī, *al-djāmi' al-bayān*, vol. 7, p. 32, lines 26-27; p. 35, lines 10-11.

⁸² Muslim, *Ṣaḥīḥ Muslim*, III, ch. 29: Kitāb al-Ḥudūd, bāb 4, tradition 1691, p. 1317. 'Umar even stated categorically that the Prophet and his Companions used to stone adulterers, and is supposed to have said: "Were it not (for) that people will say that 'Umar added to the book of God that which does not belong to it—I would have written the verse into the Qur'ān." Aḥmad Ibn Ḥanbal, *Musnad* (six vols., Cairo A.H. 1313), vol. 1, p. 329. This most interesting episode provides us with a glimpse of sections of the Qur'ān not written into the canonised text we hold today. John Burton examines this case in detail and provides us with the 'omitted' wording derived from Mālik's discussion of the penalty for adultery: '...the (wording of the) verse (which 'Umar refers to, is): "the mature male and female, stone them." 'Umar insists that, in the lifetime of the Prophet, the Muslims had recited this 'verse'.' Thus, Burton argues, the 'Book of God' need not necessarily refer to the Qur'ān. From Shāfi'i's detailed polemical analysis of this problem, Burton has shown that it could just as easily refer to "those revelations (i.e. sayings of Muḥammad) not recited or written down, part of the *sunna* of the Prophet." John Burton, "The Penalty for Adultery in Islam," *Approaches to the Qur'ān*, ed. by G.R. Hawting and Abdul-Kader A. Shareef (London, 1993), 273. See also all other major works of Burton's, and Hava Lazarus-Yafeh, "'Umar b. al-Khaṭṭab—Paul of Islam?," *Some Religious Aspects of Islam: A Collection of Articles* (Leiden, 1988), esp. pp. 7-29

evidently only upon 'Umar's imperative was the final step, and then hesitatingly, issued.⁸³ Al-Rāzī provides a narrative expressing the frustration of the Believers, and by demanding revelation (primarily on the part of 'Umar), suggests conscious manipulation of the Prophetic power:

'The reason for the prohibition of wine (came about) when 'Umar...said: "Messenger of God, wine plunders the mind and runs off with the wealth. Give us an explanation concerning it!" Thus, they asked for a judgement from God and His Messenger because wine plunders the mind...' ⁸⁴

This is not the only instance of apparent manipulation of the prophetic abilities of the new Prophet. In a graphic example of Muḥammad's relationship with God and Revelation, one reads the story of (the Prophet's wife) 'Ā'ishā bint Abī Bakr's nocturnal adventures with one of Muḥammad's Companions.⁸⁵ In that tradition one does get the impression that it is perhaps after some measure of "wifely persuasion," nothing less than a divine verse was induced for her exoneration:

'By Allāh I ('Ā'ishā) thought myself too insignificant for Him to send down concerning me a Qur'ān which could be read in the mosques and used in prayer, but I was hoping that the Prophet would see something in a dream by which he could

⁸³ The same may be said regarding the issue of *ḥijāb* (veiling of women). In *sūra* 33:53 the prophetic figure instructs those coming into contact with his wives to "*sa'alūhuna min warāy ḥijābin*." Baydāwī's comment is:

'It is related that 'Umar said: "O Messenger of God, there come into your house men who may be simple or wicked. It would be well if you commanded the veil for the mothers of believers." This verse was then revealed.'

This instance can be considered another example of 'peer pressure' resulting in the convenient and timely production of prophecy.

⁸⁴ al-Rāzī, *Maḥāṭib al-ghayb*, vol. 6, 37, lines 27-28.

⁸⁵ Muḥammad Ibn Ishāq, *The Life of Muḥammad*, trans. A Guillaume (Oxford, 1955), 496-7.

clear away the lie from me, because He knew my innocence, or that there would be some communication. As for a Qur'ān coming down about me by Allāh, I thought far too little of myself for that...

And by God the Prophet had not moved from where he was sitting when there came over him from God what used to come over him [i.e. a revelatory fit?], and he was wrapped in his garment, and a leather cushion was put under his head...(Muḥammad then said) "Good news 'Ā'isha! God has sent down word about your innocence."⁸⁶

f. It is related that after the final revelation regarding the wine prohibition was issued, the people 'then poured out what was in their jars (i.e. presumably fermented) and they said: "We abstain (from drinking it) our Lord, we (absolutely) abstain, our Lord!"'⁸⁷ According to one account, due notice had been given to the owners of liquor that such a text would be revealed and they were advised to sell while they could; but when the revelation came, it is said that zealous followers went from Muslim house to house and emptied their vessels of all liquor that was supposed to be intoxicating, commonly breaking the vessels themselves; and trading Muslims who brought wine home from Syria after this event were compelled to pour their earnings away.⁸⁸ The prohibition was extended by analogy to wine made of vinegar, and a categorical denial was given to the suggestion that wine had medicinal

⁸⁶ Ibn Ishāq, Guillaume (tr.), *The Life of Muḥammad*, 496-7.

⁸⁷ al-Ṭabarī, *Djāmi' al-bayān*, vol. 7, p. 34, last line.

⁸⁸ Aḥmad ibn Ḥanbal (d. 247), *Musnad*, (six vols.) iv, p. 336 (Cairo, AH 1313). In fact, the wines of Gaza were no longer exported to Europe by the early 9th century, probably due to the koranic prohibition, and not, as Henri Pirenne in his *Mohammad and Charlemagne* (London, 1968, first published Paris, 1937) posits, as being the result of Islam cutting Mediterranean trade routes. One can say that Islam simply discouraged the manufacture of the good without any consideration of political or commercial factors which Pirenne puts forth.

value⁸⁹—there was (Muḥammad was by this time ‘made’ to be convinced) no good in it at all.

g. The impression made by Tradition is that wine-drinking was not only known, but also widely practised, even among Muḥammad’s own followers. Indeed, those of Muḥammad’s companions who did not want to give up their drinking, may have justified their action (as yet transgression?) with the use of the following koranic verse—*sūra* 5:93—a continuation of the two verses dealing with the final prohibition of wine:

‘Those who believe and do good deeds are not regarded as sinful because of what they eat as long as they trust in God, and believe, and do good works...’

The traditions show that the prohibition of wine was inevitably a trial to the faith of the Muslims, under which many of them seem to have inevitably failed to upkeep. But the Prophet appears at no other time to have been the victim of drunken misbehaviour.

h. A Jewish messianic figure of a slightly later period than Muḥammad approached the expression of his Message with a similar prohibition of wine. The relevance lies in the fact that similar messages were promulgated by messianic figures in the turbulent late 7th and early 8th centuries.⁹⁰ Abū ‘Isa al-Isfahānī was the most significant Jewish prophet-figure of early Islam, and lived in Iran during the reign of the fifth ‘Umayyad caliph ‘Abd al-Malik b. Marwān (A.D. 685-705, or according to others under Marwān II, A.D. 744-750). He proclaimed himself a prophet and herald of the Messiah, and is remembered for his doctrine that acknowledged the validity of both Muḥammad and Jesus as prophets, but only sent to

⁸⁹ Muḥammad ibn Ismā‘īl al-Bukhārī (d. A.H. 256), *Ṣaḥīḥ al-Bukhārī*, Kitāb al-Ashriba, bāb 15 (Beirut, 1997) p. 1800, line 3.

⁹⁰ Here I particularly refer to the Byzantine-Sassanian conflict, which affected the entire region, including no doubt, also the Arabian peninsula.

their own communities, not to all peoples everywhere. He formed a sect called the 'Isawiyya that survived into the tenth century, and their asceticism is evidenced in their prohibition of both meat and wine.⁹¹

Although his proscription of wine and meat was clearly influenced by the passage about the Rekhābites (Jeremiah, XXXV), these rules equally derived from such Rabbinical traditions as those found in the Talmud *Sefer Bava Batra*, "that meat and wine ought not be indulged in by Jews while they live in exile."⁹²

How far Abū 'Isa was influenced by early Islam, or whether it was even known to him, may only be a matter of speculation, although it is not unreasonable to assume he was aware of the basic outline of Muḥammad's message. It does, however appear more likely that the koranic Muḥammad was "merely" expressing the universal social standards of the period and region.

In this case both prophetic figures would looked to the same type of universal humanistic ideals for their inspiration, merely prompted in their actions by incidents unfavourable to the smooth running of their own socio-religious community.

TRADITIONAL CHRONOLOGY: ABROGATION TO STABILISE LEGISLATION

a. Each single verse of the Qur'ān is called *āya*, "sign," "miracle" because it is traditionally believed that Muḥammad brought these verses as Divine signs for differing situations, or when his adversaries asked him for a miracle attesting to his prophethood (an exegetically derived notion rooted in *Sūras* 16:102, 13:38).⁹³

⁹¹ Steven Wasserstrom, "The 'Isawiyya Revisited," *Studia Islamica*, ex fasciculo LXXXV, 1992, p. 57, 75-76.

⁹² *Talmud Bavli*, The Schottenstein Edition, general editor R. Hersch Goldwurm, tractate Bava Batra, volume I (U.S.A., 1992), 60b (2).

⁹³ See: A. Jeffrey, "Āya", *The Encyclopaedia of Islam*, new ed., vol. 1 (Leiden, 1986), 773.

However, the difficulty arose involving the fact that abrogations, the eventual prohibition of wine being but one, were nevertheless preserved in the fixed text of the *Qur'ān* document.⁹⁴ Unfortunately for those trying to fully comprehend God's Word, when sometime *after* the Prophet's death, the *Qur'ān* source (or that which served as such in the earliest period) was compiled, both 'abrogating' (*nāsikh*) and 'abrogated' (*mansūkh*) verses were included, since traditional logic dictates that no one but the Prophet himself could have decided which was to remain valid. This may have been a factor that led, in certain instances, to seeming contradictions that the commentators and *fuqahā'* have had to solve. Baydāwī's comment⁹⁵ is illuminating on the significance of the 'principle of abrogation' for Islam:

'The reason for it [i.e. abrogation] is that laws are formulated and verses revealed as they are required, to suit the good of mankind...This varies with the time and the individual; as, for example, the necessities of life, which may be beneficial at one time and harmful at another.'⁹⁶

For the example that Baydāwī gives of the "necessities of life, etc.", it is reasonable to think he had in mind the prohibition of wine, which as we have seen, had at one time been associated not only with the "healthful nutriment" derived from the palm, but also with the delights of Paradise itself (*sūra* 78:35, 83:25).⁹⁷

⁹⁴ The idea that God might want to change his mind is an example of the fallacy, first pointed out by St. Augustine, of imagining God as a being existing in time: time is a property only of what God had created. Presumably, He knew what He intended when He set it up.

⁹⁵ Referring to *sūra* 2:106: "We abrogate any verse, or cause it to pass into oblivion, (then) We bring (a) better (one) than it, or one similar to it (in goodness)."

⁹⁶ Naṣir 'Abd Allāh b. 'Umar b. Muḥammad al-Baydāwī, *Anwār al-Tanzīl wa-asrār al-ta'wīf. Tafṣīr al-Baydāwī* (Beirut, n.d.), on *sūra* 2:106, no page numbering.

⁹⁷ However, of greater importance according to Reuben Levy in *The Social Structure of Islam* (Cambridge, 1957, reprinted 1969), 163-4, were abrogations on matters of social importance such as inheritance, the penalties for adultery, etc.

The theory of abrogation, a brilliant Islamic mechanism developed to solve problems both internal to the *Qur'ān* and between the *Qur'ān* and Sunna, was put forward as a solution for the problem of contradictory verses, explaining that certain verses, although revealed by God, were meant for temporary application only. When their relevance had passed, they were abrogated—but had to be included in the *muṣḥaf* as they were still of the 'words' of God. This theory of their inclusion elegantly explains the apparent inconsistencies between the individual revelations. W.M. Watt confidently states that this attests to the authenticity of the text, proving that nothing was altered by the later Muslim jurists to justify their own conceptions.⁹⁸ It does, however, add little enlightenment to the confusing character of many of the contradictory verses.⁹⁹

b. Although an attentive reading of the *khamr/sakar* passages in question reveals (four) stages of development, it should not be considered that here I am attempting to reconstruct the history of the prohibition of wine during Muḥammad's lifetime, a controversial subject that by its very nature precludes exact results. Indeed, Patricia Crone has written that "if the *Qur'ān* were to be used on its own, we would know for certain only that a new form of monotheism emerged in Northern Arabia and that it was being preached by a prophet known as Muḥammad." She further adds that "on its own, the *Qur'ān* is largely unintelligible."¹⁰⁰

After all, as Wansbrough says, the *Qur'ān* "adopted a profoundly ahistorical view of the world and of mankind, because since morality is eternal, the question of historical

⁹⁸ W.M. Watt, (ed.), *Bell's Introduction to the Qur'an, Revised and Enlarged* (Edinburgh, 1970), viii, 12.

⁹⁹ Compare, for instance, *sūra* 73:1-4 to its abrogation in verse 20.

¹⁰⁰ Patricia Crone, *Slaves on Horses*, (Cambridge, England, 1980), 12-13, 33.

change is relatively unimportant to the *Qur'ān*.¹⁰¹ So, the question must arise of whether indeed the *Qur'ān* furnishes us with 'information' about events and conditions in the *Ḥijāz* at the beginning of the seventh century. On its own, it is virtually impossible to extract this sort of information from the *Qur'ān* in isolation, but nevertheless, it is still the 'foundation document' of Islam and as such it must be of a certain amount of historical value to us.¹⁰²

Must we then redefine our meaning of the word 'historical' when pertaining to the *Qur'ān*? It can however, be a source for our understanding of some of the ideas and materials that went into the foundation of Islam—but only when considered together with its inseparable exegesis—the *Ḥadīth*.

Nevertheless, the final verse (*sūra* 5:90-92) is traditionally thought of as that which abrogates the other verses dealing with alcoholic consumption, and presents a traditional chronology illustrating the koranic development of the issue as it has come down to us. Together with the explanatory stories surrounding the circumstances of its revelation, the device of abrogation is the only means by which we know that the prohibition of wine in the *Qur'ān* was the result of a change of attitude.

A traditionalist explains abrogation by saying that even when an enactment was made, it was not always final; for naturally enough Muḥammad and/or God had occasion at times to change his/His mind.¹⁰³ Thus, with each change of mind (or with a developing realisation of an issue that had previously been of no interest to the Believers) came a new

¹⁰¹ John Wansbrough, *Koranic Studies: Sources and Methods of Scriptural Interpretation* (Oxford, 1977), 1, 29. However, even if history is not important to the *Qur'ān*, it may nevertheless be possible for a scholar to use it as a *source* for history.

¹⁰² I owe this observation to Dr. Gerald Hawting.

¹⁰³ However, this uncertainty in the stability of the revealed code laid the Prophet open to charges which themselves required special 'revelations' to be sent down to refute the calumniators, as previously noted.

'revelation' contradicting some older one already in existence—graphically shown in the case of the wine-drinking prohibition.¹⁰⁴ This idea is illustrated by al-Rāzī:

'Al-Ḳafāl said that the wisdom of issuing the prohibition (against wine drinking) in these stages was that God knew that the people were already accustomed to drinking wine and making use of its many uses. And he knew that if he had prohibited them all at once (from the use of wine), it would be too difficult for them. Thus unquestionably (therefore) he made use of these stages and kindness in the prohibition (against drinking wine).'¹⁰⁵

c. While we of course have no means to check the order of revelations as (and *if*) they were actually expressed by the Prophet, it is the above sequence of revelations regarding wine and its eventual prohibition that is the most accepted one (and logical, on the literary level) among the traditionalists and commentators of the Ḳur'ān,¹⁰⁶ assisted by, and in turn conforming to the sequence of events suggested by the Ḳur'ān through the 'trustworthy' exegetical traditions. However, this order of revelations is not without discomfort to the traditionalist. It has seemingly allowed for one who drinks wine to perform his prayer (legally) while intoxicated (albeit temporarily):

'The verse (*sūra* 4:43 ["...do not approach the prayer..."]) was (revealed) *when they drank the wine...*this was before the prohibition of wine was revealed.'¹⁰⁷

'They [merely...P.L.] *avoided* strong drink during the time of the prayers. This custom was abolished by the prohibition of wine.'¹⁰⁸

¹⁰⁴ And as equally dramatic as the abrogations involved in the issue of *djihād* where the "Verse of the Sword", *sūra* 9:5, traditionally abrogates over 130 other koranic utterances found in the *muṣḥaf*.

¹⁰⁵ al-Rāzī, *Mafātīḥ al-ghayb*, vol. 6, p. 35, lines 21-23.

¹⁰⁶ al-Ṭabarī, *al-djāmi' al-bayān*, vol. 7, p. 33.

¹⁰⁷ al-Ṭabarī, *Ibid.*, vol. 4, p. 96, lines 2-3.

¹⁰⁸ al-Ṭabarī, *Ibid.*, line 10.

In an attempt to explain this uncomfortable conclusion (that *sūra* 4:43 was revealed chronologically only after *sūra* 16:69 ["...good nourishment..."], and *sūra* 2:219 ["...sin as well as benefit..."]), it was added that the second verse (*sūra* 2:219) indeed:

'...reveals the (existence of the) prohibition of wine but we are (still) in need of the explanation of what wine is, and then (also) the (further) explanation of the fact that this verse *shows the (existence of the) prohibition of the drinking of wine* [emphasis added P.L.].'¹⁰⁹

However, in a layer of *Ḥadīth*, preserved by al-Ṭabarī, and never integrated into mainstream Islamic jurisprudence, one finds another approach to the problem of drunkenness, and the critical question of 'what wine is' relating to the prayer:

1. 'According to others [i.e. those who do not agree to accept abrogations regarding prayer and alcohol] who said: "The meaning of this [i.e. *sūra* 4:43] is ("drunk") on sleep."¹¹⁰
2. According to al-Ḍaḥḥāk: "It has not the meaning of drunk on wine, in fact it means drunk "on sleep".¹¹¹

This stream of thought (represented by a title and two examples with differing *isnāds*) is one which questions the meaning of "drunk" and by lexical means, removes the problematic *sūra* 4:43 not only from the realm of abrogation, but from the context of the prohibition of wine entirely.¹¹² It was never accepted via *idjmā'*.

¹⁰⁹ al-Rāzī, *Mafātīḥ al-ghayb*, vol. 6, p. 35, last two lines.

¹¹⁰ al-Ṭabarī, *Djāmi' al-bayān*, vol. 4, p. 96, line 10. The explanation of how one can get "drunk," or perhaps addicted to sleep is not provided.

¹¹¹ Ṭabarī, *Ibid.*, line 20. See the above comments, which apply also here.

¹¹² Regarding internal inconsistencies to the theory of abrogation, John Burton has pointed out, and I loosely quote: "The Qur'ān nowhere announced a certain verse as being abrogated by another. The scholars did not possess an undeniable indication of dating, and only asserted their allegations without proof. We not even know why some verses come before others in time, nor how it is to possible distinguish a verse which is the sole valid source of an obligatory action from a verse whose ruling was abandoned, given the absence of such a declaration in Qur'ān. There is no agreement even on the

d. Finally, another approach to the problem of conflicting koranic reports was undertaken by Ibn Ḥazm (d. Spain, 1064 A.D.). In his attack against the 'Ash'arite doctrine concerning the just nature of God (connected to man's free-will, allowing God to remain Just in a world containing the necessary existence of evil, and the resulting *need* for God to send prophets), Ibn Ḥazm, who died in Spain in A.D. 1064, a member of the sect of Zāhirīs (the "Literalists" who could not accept the existence of any contradiction in the divine text), carried his arguments from the Qur'ān to logical conclusions. Among his polemical/philosophical theories, he asserted that all depends upon God's decree, for an act that may at one time be good, may be bad at another time.¹¹³ Connected with this point is the question of wine drinking: if a man before its prohibition in the Qur'ān had regarded it as unlawful, he would have been an unbeliever. But after its prohibition, he became an unbeliever if he indeed regarded it as lawful.¹¹⁴

QUR'ĀN AND AUTHORITY: THE PROPHET'S NIGHT JOURNEY AND ASCENSION

a. The genesis of the idea of divine abrogation, although later developed into a basis of Islamic religious dogma, could not have had the authority in the period of the origins and earliest development of Islam, to place an authoritative (divine) chronology solidly and uniformly into the minds of the Believers. In order to fill out and explain the new dispensation and its various contradictions, a rare divine event was connected directly to the Prophet himself. Indeed, Muḥammad and his prophethood are very much in the background

number of verses abrogated." John Burton, *The Sources of Islamic Law: Islamic Theories of Abrogation* (Edinburgh, 1990), 31-32. Why, then, was *sūra* 4:43 traditionally reckoned to have been revealed after *sūras* 16:9 and 2:219?

¹¹³ Ibn Ḥazm, *Kitāb al-Fiṣal* (5 parts, Cairo, A.H. 1317), III, p. 66.

¹¹⁴ *Ibid.* p. 109.

in the *Qur'ān*,¹¹⁵ overshadowed by other figures and themes, although in the *Ḥadīth*, on the other hand, Muḥammad was made the true focus.

Thus, according to traditional exegetically derived chronology, in about A.D. 620 Muḥammad was said to have been transported to "the farthest mosque" (*al-masḍjid al-aḳṣā*), traditionally (but not exclusively) identified with Jerusalem. This *isrā'* was followed by the *mi'rāḍj* (ascension) when Muḥammad, mounted on the winged horse-thing Burak, was accorded a vision of heaven, connected with the complex problem of the exegesis of *sūra* 17:1:

'Glory be to Him who caused His servant [i.e. Muḥammad] to travel by night from the holy mosque [*al-masḍjid al-ḥarām*] to the farthest mosque [*al-masḍjid al-aḳṣā*], the surroundings of which We have blessed, that We might show him some of Our signs. He is all-Hearing, all Seeing.'

Insofar as our present literary evidence goes, it was only in the first part of the second century that the biographer of the Prophet, Ibn Ishāq (A.H. 85?-151), connected this night-journey with the no less complex ascension of Muḥammad. It was he who claimed that *al-masḍjid al-aḳṣā* was in Jerusalem, and that it was from there the Prophet ascended to heaven. However, this chronicler, genealogist, and traditionalist precedes his account with expressions indicating that these stories are not necessarily accepted as dogma.¹¹⁶

Because most scholars of early Islamic Jerusalem (including al-Bukhārī and al-Ṭabarī¹¹⁷) agree that the sacrelization of the rock by the Umayyad caliph 'Abd al-Malik, on which the Dome of the Rock was completed probably in A.H. 72, was not linked to the

¹¹⁵ This does not necessarily hold true for prophecy *per-se* where former prophets appear on many occasions, generally for moral purposes.

¹¹⁶ See: Ibn Ishāq, *The Life of Muḥammad*, trans. A. Guillaume (Karachi: Oxford University Press, 1955), 181-182.

¹¹⁷ See: Oleg Grabar, "The Umayyad Dome of the Rock in Jerusalem," Reprinted from *Ars Orientalis*, III, 1959, 37, n. 28.

activities of the Prophet, and especially not to his night journey, it is held to suggest that *at the time of construction*, Muslims had not yet come to associate the rock itself with the night journey. Or more relevant to this discussion, that at that early point (either the figure of Muḥammad and/or) the Ḳur'ān document had not yet become fully formed.

The narrative of Muḥammad's ascension to heaven developed to include two important elements that were not dealt with in any formal legalistic sense (that which can be used as a source of legal precedent and guidance). These are the fixing of the number of prayers,¹¹⁸ and the *divine* judgement concerning the evil nature of wine, separated from any temporal concerns of Companion drunkenness and the like:

'His [i.e. Muḥammad's] companion [i.e. the archangel Gabriel] went with him to see the wonders between heaven and earth, until he came to Jerusalem's temple. There he found Abraham, Moses, and Jesus assembled with a company of the Prophets, and he prayed with them. Then he was brought two vessels: one containing wine (*khamr*) and the other milk...Then the Messenger of God took the bowl of milk and drank it, and he left the wine. And Gabriel said to him: 'You have been (rightly) guided to the *fiṭra* (usually understood as the natural religion¹¹⁹) and so will your people be, Muḥammad, and wine is (now) prohibited upon you.'"¹²⁰

¹¹⁸ See: al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, book I, Kitāb al-Ṣalāt, bāb 1, tradition 349-350, 131-2. The account about the introduction of the daily prayers is of course exegetically derived, and is reminiscent of Genesis 18:26-33, where Abraham argues with God, until the number of righteous men required to save sinful Sodom is reduced from fifty to ten.

¹¹⁹ My thanks to Prof. Yohanan Friedman for this observation. See: D.B. Macdonald, "Fiṭra", *Encyclopaedia of Islam*, new ed., vol. II (Leiden, 1991), 931-3.

¹²⁰ Ibn Hishām, *Sirat Rasūl Allāh* (Cairo, n.d.), vol. 1-2, p. 212, lines 10-15; al-Bukhārī *Ṣaḥīḥ*, book IV, Kitāb al-Ashriba, bāb 1, tradition 5576, p. 1791; bāb 12, tradition 5603, p. 1797. The parallel to the *aggada* (exegetical Rabbinic legend) of the child Moses being forced to choose between gold and hot coals before Pharaoh is particularly striking in this case. Here again, it was the archangel Gabriel who guided the child's hand to the coals. The child plucked out a burning coal and put it to his lips, and for life remained "heavy of speech and heavy of tongue" (Ex. 4:10). See: J.H. Hertz (ed.) *Pentateuch and Haftorahs*, 219.

The story of Muḥammad's Night Journey and Ascension was exegetically derived to serve various purposes, including the legitimisation of the five daily prayers, on which nothing definite is found in the Ḳur'ān, and the strict prohibition of the drinking of wine of which, as we have seen, only contradictory proto-legislation is found. Further, the story was also to serve as the tangible proof of Muḥammad's prophethood,¹²¹ which by its very existence gives us a glimpse into how the early commentators perceived the prophet figure, as opposed to the unquestionably authoritative status the Ḳur'ān gives to itself.

c. One can connect two points here: 1. *Legal* material in the Ḳur'ān is, for the most part, treated in a very general and tentative sense,¹²² and 2. A miracle was sought to define Muḥammad's prophetic skills. Putting these two together would indicate that although Muḥammad's prophetic word carried a measure of weight in moral circumstances, his authoritative prophetic status in the Ḳur'ān had not yet been developed sufficiently to deprive his audience of an ingrained cultural habit such as 'wine'-consumption. This condition meant that drafting Law, at least Law that did not derive from existing Arab custom itself would have been nearly impossible. Indeed, the drafting of legal punishment (the so-called *ḥadd* crimes), as we shall see, was conspicuously avoided here.

¹²¹ "Isrā'," *EI2*, s.v. (B. Schrieke).

¹²² The Ḳur'ān "contains comparatively little legal matter, and the little it contains is entirely unsystematic and haphazard"; or at least as an article on the subject puts it: J.N.D. Anderson, "Recent Developments in Sharī'a Law," *The Muslim World*, 40 (1950), 245: "It is evident that Muḥammad himself made no attempt to work out any comprehensive legal system, a task for which he seems to have been singularly ill-suited; instead, he contented himself with what went little beyond 'ad hoc' amendments to the existing customary law." Contrast this with the subject of ritual cleansing, containing minute details of purification before prayer, as expressed especially in *sūra* 5:6, as well as the detailing of laws of marriage and inheritance.

It is evident that the *Qur'ān* lacked singular and authoritative legislation regarding the important institution of the prohibition of wine. Important, because it was one of the most obvious social traits separating the proto-Muslim from his Jewish, Christian, and pagan Arab neighbour. It was the koranic exegesis, most especially the *Ḥadīth* literature that was to deal with the practical application of the prohibition in the same way that the ban on figural representation in Islamic art was dealt with there—in far more stringent terms than in the *Qur'ān* itself.¹²³

¹²³ Considering the character of the mosaics on the likes of the Great Mosque at Damascus (A.D. 715), where one finds entirely naturalistic depictions, one may similarly ask when did the ban on representation of living figures, which is generally believed to be characteristic of Islamic art, arise? Indeed, like the question of the prohibition of wine, it would seem that in the early days of Islam there was no widespread veto; there is certainly no passage forbidding representational painting in the *Qur'ān* itself. The *Ḥadīth* on the other hand did take up a hostile attitude, though it is questionable whether this hostility was actually formulated before the ninth century. But the fact that no figures whatsoever are included either in the Dome of the Rock or at Damascus does suggest that *in mosques* the ban was in force by about A.D. 690.

PART THREE

THE ḤADĪTH: EXPLAINING AND COMPENSATING FOR AN INADEQUATE REVELATION

Goldziher considered the problem of contradictions between individual *ḥadīths* the result of internal political competition between early Islamic politico-religious factions, and as a result of different groups of scholars justifying their own local theological positions—long after the Prophet's death.¹²⁴ However the picture was more complex. It was Schacht who went further, examining the content (*matn*) and *isnāds* (chains of authority) of the *ḥadīths* dealing with legal questions, and categorised *regional groups of scholars* (formed into legal "schools") working out a program of Islamic Law as they understood them to be in their separate areas and as a result of pressures exerted by "orthodoxy."¹²⁵ Through an examination of the increasing reliance and resultant sophistication of the *isnād* (and perfection as it found its way back towards the Prophet himself), Schacht demonstrated that "the *isnād* itself had consciously been seen and exploited as a weapon of debate in its own right."¹²⁶

Circumstances obviously called for the regulation of matters not dealt with in any satisfactory way in the Holy Book. This supplement, explaining and expanding the deficient Revelation, was prophetic tradition. The use of such material is what Muḥammad

¹²⁴ Ignaz Goldziher, *Introduction to Islamic Theology and Law*, trans. by A. & R. Hamori (Princeton, 1981), 69-70.

¹²⁵ Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford, 1950), ch. III, esp. p. 66-73; Burton, *Ḥadīth*, 148.

¹²⁶ Burton, *Ḥadīth*, 148. The approach of Schacht was continued by G.H.A. Juynboll, who asserts that it seems likely that many sayings attributed to Muḥammad were originally sayings of early (in his words) "holy men" (*fuḳahā'*) from the first or second centuries A.H., sayings that were subsequently "raised" to the status of *ḥadīth* of some Companion of, or Muḥammad himself. G.H.A. Juynboll, *Muslim Tradition* (Cambridge, 1983), Chapter 1, 51-52, 59-60, 74-76. Schacht's conclusions that the koranic text did not serve as a basis for Muslim law before the ninth century was used as a basis for John Wansbrough's *Quranic Studies* (London, 1977), see esp. p. 44.

al-Shāfi‘ī (d. A.H. 204/A.D. 819), an Arab student of Mālik ibn Anas, called “non-recited revelation.” In other words, *divinely inspired* human actions and words utilised in order to fill out and explain the general provisions of the Qur’ān,¹²⁷ in this case compensating for the lack of clear instruction on almost every aspect of intoxicants in the Qur’ān.

This material, although written in time and place is, for the most, certainly not to be treated as reflecting *history*. This was material composed in order to solve certain problems the koranic text did not for one reason or another deal with. It is a record of what Muslims of later generations told each other about the early Islamic community, and from this perspective, makes it possible to work out from the residues of their discussions what they were really talking about by circulating these materials, and why.¹²⁸

a. ḤADĪTH ON THE STATUS OF WINE AND THE DEGREE OF SIN

Not only was there a lack of fixed legislation regarding the punishment for wine-drinking in the Qur’ān, but no clear indication of its status within the hierarchy of the most serious of sins exists (the worst being of course polytheism [*shirk*]). It was, therefore, necessarily the many utterances attributed to the Prophet within the *Ḥadīth* regarding the inherent evil of wine that was to provide guidance and explanation—it being judged among the gravest of sins:

1. ‘He who drinks wine (*khamr*) in the (this) world, then does not repent from (doing) it, it will be prohibited (to him) in the Hereafter.’¹²⁹
2. ‘God has cursed the wine, and its drinker, and its server, and its seller [and its buyer], and its presser, and the one for whom it is pressed, and the one who conveys it, and the one to whom it is conveyed (brought).’¹³⁰

¹²⁷ See the chapter “The Study of *Ḥadīth*” in Burton’s *Introduction to the Ḥadīth* (p. 55-92).

¹²⁸ I thank Dr. Richard Kimber for these remarks.

¹²⁹ al-Bukhārī, *Ṣaḥīḥ*, book IV, Kitāb al-Ashriba, bāb 1, tradition 5575, p. 1791.

3. 'A person, at the time of drinking wine, is not a Believer.'¹³¹
4. 'The Prophet forbade its use [i.e. *khamr*, alcohol] and disliked/expressed hatred that it be prepared. He [the questioner, al-Djū'fī] said: "I prepare it as a medicine", then [the Prophet] said: "It is no medicine, but an ailment."¹³²

The gravity of the act of drinking *khamr* is reflected in Zamakhshārī's *Tafsīr* regarding *sūra* 44:3-4 ('We sent it down [i.e. the *Qur'ān*] on a blessed night [i.e. the "Night of Power", of *sūra* 97:1-2, traditionally connected with a night in Ramaḍān, and commemorated as such] because we want to warn (man) on this night (that) every matter of wisdom is by command from Us.'):

'Forgiveness occurs on this night [in Ramaḍān]. The Prophet said: "In this night God forgives all Muslims excepting the soothsayer, the sorcerer, the quarrelsome one, the drinker (of intoxicating beverages), the one who is disobedient to his parents, and the unchaste one."¹³³

By utilising a literature that came into existence in order to fill out, explain and *complete* the Revelation, it can be seen that the jurists of later times, dictated that the early community accorded drinking wine the status of one of the most serious of sins: 'In drinking and gambling are the biggest of sins.'¹³⁴

However, *ḥadīths* were also produced and accepted which counteract the absolute condemnation by lexicographical means:

¹³⁰ Abū Dā'ūd al-Sidjīstānī, *Sunan Abi Dā'ūd* (Beirut, 1950), vol. II, Kitāb al-Ashriba, bāb 2, trad. 3674, p. 446.

¹³¹ al-Bukhārī, *Ṣaḥīḥ*, book IV, Kitāb al-Ashriba, bāb 1, tradition 5578, p. 1792.

¹³² Muslim, *Ṣaḥīḥ Muslim*, III, ch. 36: Kitāb al-Ashriba, bāb 3, tradition 12 (also listed as no. 1984), 1573.

¹³³ al-Zamakhshārī, *Al-kashshāf*, ed. Lees, 2 vols., vol. II, 32.

¹³⁴ Note here that *shirk* (polytheism) is not even mentioned as one of the worst of sins. Ṭabarī, *Djāmi' al-bayān*, vol. 2, p. 360, line 15.

'My community will, in days to come, drink wine. They will not call it [i.e. fermented drink] by its proper name, and their princes will support them in what they do.'¹³⁵

Hadīths were likewise produced showing that such people are threatened that God will turn them into apes and pigs like past koranic transgressors:

'The Prophet said: "Indeed there will be, from my followers, kinsfolk regarding as legal sex, silk (-wearing), wine (*khamr*-drinking), and music, and kinsfolk will stay (near) to the side of a mountain, one (shepherd) will go to them with his sheep—meaning in the evening—in order to obtain something he needed, and they shall say: "Return to us tomorrow". And God destroyed them and the mountain fell (on them), and He changed others (of them) into apes and pigs until the Day of Resurrection."¹³⁶

In time, a blending of the traditions took place whereby times will become ever worse, and eventually there will be people who declare 'wine' allowed, and so it will be drunk by the generation of the last days:

'The Prophet said: "Of the signs of the Hour: ignorance will appear, and (there shall be a) decrease of knowledge, and (improper) sex will appear, and wine (*khamr*) shall be drunk, and men shall decrease, and women will increase until there shall be fifty women cared for by every one man."¹³⁷

From the remnants of their discussions dealing on the one hand with an explanation of the koranic text, and on the other hand, with determining fixed legislation, we learn that the scholars were forced to take into account a certain *reality* of wine-drinking amongst the

¹³⁵ Ibn al-Athīr, (*Al-*) *Kāmil*, Ed. C.J. Tornberg. 14 volumes (Leyden, 1876), vol. V, 12. This is a type of apocalyptic tradition in line with that of the more well known Bukhārī's (see note 114). The issue of *nabīdh*, an intoxicant going under 'another name' will be covered below.

¹³⁶ al-Bukhārī, *Ṣaḥīḥ*, IV, Kitāb al-Ashriba, bāb 4, tradition 5590, p. 1794.

¹³⁷ al-Bukhārī, *Ṣaḥīḥ*, IV, Kitāb al-Ashriba, bāb 1, tradition 5577, p. 1791.

Faithful. They thus applied the idea of the gradual decrease in quality of the pious Islamic community, and in this way, brought forward the Last Day.

Evidently, a need was felt by other scholars to produce and take into account viable *hadīths* which minimised the effects of harsh prophetic statements too drastic for an emerging 'civil society' based on a just as well as practical system of regulation:

'Umar narrated that during the lifetime of the Prophet there was a man called 'Abdallah whose nickname was Donkey, and he used to make the Prophet laugh. The Prophet lashed him because of drinking (alcohol). And one-day he was brought to the Prophet on the same charge and was lashed. On that, a man among the people said: "O Allāh, curse him! How frequently he has been brought (to the Prophet on such a charge)!" The Prophet said: "Do not curse him, for by Allāh, I know for he loves Allāh and His Apostle.""¹³⁸

So, we find the persistent drinker 'mildly' punished by a solid group-beating, but in no other way stigmatised or outcast, a precedent expressed by the first set of *hadīths* which reflect a theoretical standpoint relating the Law to Revelation without, however, accounting for (the problematic) human nature in a just society. This is further expressed in the following *hadīth* which again removes the religious implication from the practical application of the Law:

'Abū Hurayra narrated that a drunk was brought to the Prophet and he ordered him to be beaten (lashed). Some of us beat him with our hands, and some with their shoes, and some with their garments (twisted in the form of a lash). When that drunk had left, a man said: "What is wrong with him? May Allāh disgrace him!" The Prophet said: "Do not help Satan against your (Muslim) brother.""¹³⁹

In these two traditions that reflect a stream of scholarly debate, it is seen that the position of the persistent drinker is not at all in keeping with other harsher expressions cursing the

¹³⁸ Bukhārī, *Ṣaḥīḥ*, IV, Kitāb al-Ḥudūd, bāb 5, tradition 6780, p. 2117.

¹³⁹ Bukhārī, *Ibid.*, bāb 5, tradition 6781, p. 2117.

drinker, and this more moderate explanation of the koranic code results in a diluting of the severity of the act itself—an act which after all, God has shown is part of Satan's work.

Nevertheless, no fixed penalty was expressed in these remnants of scholarly debate which concentrates on measuring the moral aspect of the crime itself. Fixed legislation did, however, develop in an attempt to standardise the status of the crime in a physical sense, as well as create a practical application of the Law. The next sub-section will examine the debates concentrating on the legal status of wine-drinking and its resultant punishment within the framework of the so-called *hadd* crimes.

b. CRIME AND PUNISHMENT: SEARCHING FOR A FIXED PENALTY BY KORANIC INTERPRETATION

The Qur'ān prohibited 'wine'-drinking and portrayed it as one of the most serious of sins, but aside from moral sanction, did not enact any penalty for transgressors. This penalty was decided only at a later stage of the development of Islamic law, for by taking the Qur'ān alone as evidence, during the Madīnan period the principles of the koranic legislation were developed in genesis by the inspired Prophet only as far as was required by the practical problems confronting his embryonic Community.

It was slightly later however, that in the newly subdued territories, the Community came face to face with civilisations vastly superior (at least in numbers) to their own, but about which their Revelation said little or nothing. Having no comprehensive guide either in political emergencies, or when social or legal problems arose, the Muslim governors were driven to adopting local usage, or else to applying their own reason and common sense as a way out of their local difficulties. We shall see how the punishment for wine-drinking conforms to this model.

In order to place the Qur'ān-defined crime of wine-drinking into a legal framework, it is worthwhile to examine how 'crimes' are generally treated in the Qur'ān. Offences are

defined as forbidden acts which God punishes by a legal penalty (*ḥadd*) or discretionary punishment (*ta'zīr*).¹⁴⁰ Important to Islamic penal law is the distinction between these offences, where the punishment is determined in the *Qur'ān*, and offences for which the punishment may be established by a (God-guided) judge using his personal discretion.

In the context of Islamic law, *ḥadd* refers to 'boundaries'; divine statutes and punishments contained within the body of the *Sharī'a*.¹⁴¹ It is elaborated through the discipline of *fiqh*.¹⁴² In a narrower sense, *ḥadd* has become the technical term for the punishments of certain acts which have been forbidden or sanctioned by generally fixed punishments in the *Qur'ān* and have thereby become crimes against religion.¹⁴³ The *ḥadd* is a right or a claim of God (*ḥaqq Allāh*), therefore no pardon or amicable settlement is possible once the case has been brought before the *qāḍī*.¹⁴⁴ In actual fact however, active repentance (*tawba*) is taken into account (especially in the cases of theft and crimes against the Community/State).

In the *Qur'ān*, criminal law did not exist in the technical sense of a comprehensive set of offences. Murder (and mutilation), for example, was regulated in detail, but treated as

¹⁴⁰ Abū al-Ḥasan al-Māwardī, *Kitāb al-Aḥkām al-Sulṭāniyya* (The Political Constitutional, Stambūl, A.H. 1299), p. 219.

¹⁴¹ Defined as the 'path to a water-hole'; a name given to the sacred law of Islam governing all aspects of a traditional Muslim's life.

¹⁴² 'Understanding' (of *Sharī'a*), the system of jurisprudence based on the *uṣūl al-fīqh*, the sources, origins and their uses. See: M.G. Carter "*uṣūl*", *The Encyclopaedia of Islam*, new ed., vol. X (Leiden, 2000), 928-30.

¹⁴³ B. Carra De Vaux/J. Schacht, "*Ḥadd*", *The Encyclopedia of Islam*, new ed., vol. III (Leiden, 1996), 20. Hereafter, "*Ḥadd*", *El²*, s.v. (De Vaux/Schacht).

¹⁴⁴ "*Ḥadd*", *El²*, s.v. (De Vaux/Schacht).

a private, not public offence.¹⁴⁵ Nevertheless, the vagueness of the koranic language about the alternative to revenge, and the recommendation given to mercy, give the Muslim scholars ample room for discussion and debate.¹⁴⁶

For the remaining offences, *criminal* doctrine was largely confined to six offences—sexual relations outside of marriage (fornication), false or slanderous allegations of such, theft, wine-drinking, crimes against public order/armed robbery, and, although not mentioned as such in the *Qur'ān*, apostasy. In these crimes the notion of man's obligations towards God predominate, and most prominent as, according to traditional legal sources as they solidified, God Himself had 'defined' the punishments in His Revelation.

All the *ḥadd* offences but theft (including murder) are punishable by death, and in theory only if the accused is guilty of one of the specified offences, is it legal for a Muslim to be put to death by the Muslim authorities, where no discretion is given to the judge. However, the only *ḥadd* crime which does not bring with it its own punishment sanctioned by the *Qur'ān* is that of wine-drinking. It is the Tradition that was forced to interpret and thus fill in the deficiency, Tradition that only in some of its expressions, called for death as the legal penalty.

Noteworthy is the fact that never are the so-called *ḥadd* crimes mentioned within the specific context of the koranic *ḥudūd Allāh*.¹⁴⁷

¹⁴⁵ In this case, two points are worthy of remark. Firstly, there is expressed the notion of equivalence in the eyes of the Law. Indeed, this is the classic condition for a *ḥadd* punishment. This means that if one of the stated groups kills someone in another, punishment by death cannot be used. Secondly, arrangements are to be made for compensation to the injured parties, and punishment by death, unlike what we are told was widespread in the pre-Islamic period, is thus discouraged.

¹⁴⁶ See Levy, *Structure*, 352.

¹⁴⁷ A cursory examination of the *Qur'ān* concordance reveals under a dozen instances of the phrase *ḥudūd Allāh*. It would have been expected that the crimes solidified in Islamic law named as *ḥadd*, would have appeared when the term *ḥudūd Allāh* was used. This is not at all the case. In fact, it is in separate verses that the crimes themselves are mentioned, and *without* connection to the phrase.

In the early period of the Islamic community, those looking to meet legal challenges used their own judgement without any hesitation. This exercise of judgement or opinion is known in Arabic as *ra'y*, and it has become a technical term in Muslim jurisprudence.¹⁴⁸ It is undoubtedly because of the lack of uniformity arising from personal judgement or opinion, that penal law is that area of the Law that was least developed by the Muslim jurists, and where local administrative regulations found broad application.

c. ḤADĪTH AS DOCUMENTATION IN SETTING AND JUSTIFYING PUNISHMENTS

It is readily seen that a challenge was faced by the early scholars of Islamic law (and their heirs) regarding various questions of legal practice that found no connection or precedent in the Qur'ān: discussions on the fast of 'Aṣḥūrā'; opinions on temporary marriage (which may or may not be a reference to the (tenth) form *istamta'tum* in *sūra* 4:24); washing or wiping the feet, or simply the shoes, in the *wuḍū'* (*sūra* 5:6, the ritual ablution for

Generally each reference to *ḥudūd Allāh* is of a polemical or moral nature, not of an especially legal nature, and certainly without any reference to criminal law. It is curious that the definition for the "limits" was left vague without exception. Why? Did the composer(s) of the verses have any idea of what these limits should be? Were they left undefined because it was clear they would not have been met? Or perhaps the Prophet did not have the legal authority to solidly define what the limits of God should have been, and thus only gave them a moral character. Or on the other hand, perhaps from a cultural point of view, those limits were obvious enough not to have been stated again.

¹⁴⁸ The free and unrestricted use of *ra'y* or arbitrary opinion was checked by the introduction of a rule that such *ra'y* must be controlled by reference to the Qur'ān. If the latter should contain no precedent on any particular point, then correct inferences could be drawn—*ḥiyās*, "measurement" and hence "analogy" between koranic the verses which became a cornerstone of the Ḥanafī school.

worship);¹⁴⁹ shortening the ritual prayer (*ṣalāt*) on journeys; combining certain ritual prayers in certain conditions; and the penalty for the crime of wine-drinking.¹⁵⁰

In solving this dilemma, the early scholars were obliged to take account of another, but no less problematic source, the *Sunna*, which tended to be highly susceptible to regional differentiation and contradictions as reflected in the *Ḥadīth*. This literature was developed around the *Qur'ān* as a companion source to fill out and complete the divine text. Indeed, it was a body of literature developed in order to provide full understanding of that text—the classic definition of *tafsīr*.

By its very *raison d'être*, the legal material in *Ḥadīth* is more developed than that of the *Qur'ān*—that is, each individual account (*khabar*, pl. *akhbār*) is likely to focus more sharply on specific details of a particular practice than does the *Qur'ān*, whose 'legalistic' verses often limit themselves to laying down broad guidelines of practice.

Although al-Shāfi'ī attempted to reduce use of the authoritative *Ḥadīth* material exclusively to sayings and deeds allegedly of the Prophet himself, defining *Sunna* as 'the model behaviour of the Prophet' as against 'past custom', arising from his attempt to document and 'prove' the current state of the Law,¹⁵¹ the *Ḥadīth* was applied also, if not equally, to the sayings of the Companions and their Successors. In this problematic source of jurisprudence one finds little uniformity with "Companion reports" often clashing—the

¹⁴⁹ See Burton, *Introduction to the Ḥadīth*, 24-29

¹⁵⁰ The *Qur'ān*, for example, provides many exhortations to perform ritual prayer (*ṣalāt*), but gives no clear description of how prayer is to be performed or even of how many prayers are required daily; it is the *Ḥadīth* literature, in its role as *tafsīr* that spells out in detail just how and when ritual prayer is to be conducted.

¹⁵¹ John Burton, "The Islamic Legal Sciences", *Collection of the Qur'ān* (Cambridge, 1977), pp. 9-46, especially p. 11-12.

reason Shāfi' wanted to reduce the material as much as possible down to the Prophet himself. The solution contrived by Shāfi' is also addressed by al-Rāzī:

"The traditions of the Companions of the Prophet contradict and refute (each other). (Therefore) leave them and have recourse (only) to what is evident in the Book of God and the *sunna* of the Messenger."¹⁵²

The divergence of Companion reports is well, if not best illustrated in the punishment of the wine drinker. These punishments range from no fixed penalty, to death, and each finds precedent in *sunna*. For example, the penalty for drinking was first 'fixed' at forty lashes, we are told, by Abū-Bakr, and later at eighty lashes by 'Umar and 'Ali, the latter being forced to draw a rough parallel (*kiyās*, 'analogy') with the offence of *kadhf* (alleged false accusation of unchastity, i.e. slander), another *ḥadd* crime (*sūra* 24:4) for which the Qur'ān had fixed the same penalty.

To understand the variety of koranic interpretations in its legislative role, one must group together sets of traditions that convey differing streams or schools of thought/debate as they relate to the critical question of punishing the wine-drinking transgressor. The traditions are the remains of discussions between scholars attempting to understand and explain the Qur'ān and its meaning, and come to some sort of general agreement. The traditions do not reflect chronological history, although they are doubtless rooted in some form of historical precedent in the period and society in which those scholars were working. Whether or not they are "true" or not, the stories contained in the *ḥadīth* serve as a vehicle not only to understand the Qur'ān, but to authoritatively supply legal precedent.

That there is to be a painful and humiliating punishment is made clear in the following stream of tradition indicating that the punishment is undertaken on more than a purely physical level, in keeping with the koranic spirit of the crime:

¹⁵² al-Rāzī, *Mafātih al-ghayb*, vol. 6, 38, lines 24-25.

‘Abd al-Raḥmān said I can still picture myself looking at the Prophet...when a man who had drunk wine was brought before him. He told the people to beat him. Some struck him with sandals, some with sticks and some with fresh branches of the palm-tree (*mitakha*). Ibn Wahb said: “This (*mitakha*) means green palm fronds.” Then the Prophet took some dust from the ground and threw it on his face.’¹⁵³

The fact and problem of no fixed divine punishment is illustrated by the following *ḥadīth* where it is asserted that it was not the Prophet who instituted the legal penalty, but rather the Companions, or their heirs:

‘Alī ibn Abī Ṭālib said: “I would not have felt sorry for anyone dying (from receiving the legal punishment for a crime), except the drunkard, for indeed if he would die I would pay the blood-price (*diya*), and that is because the Prophet did not fix it [i.e. the punishment for the drunkard].”¹⁵⁴

From the above no fixed penalty, it is yet another stream of *ḥadīth* which tells us that Muḥammad and his immediate successor Abū Bakr tended to inflict a fixed forty blows by means of palm branches or sandals:

‘Ibn Mālik said: “The Prophet struck a drunkard with palm-stalks and shoes, and Abū Bakr flogged forty (times).”¹⁵⁵

A report has it that Khālīd b. al-Walīd reported to ‘Umar that people were indulging in prohibited drinks. Then, ‘Umar consulted the Companions, who advised him to fix the number of blows, not at the customary forty, but at eighty—a number suggested by the Qur’ān (*sūra* 24:4) although for a separate instance and used here in analogy:

‘And those who accuse honourable women, then do not bring four witnesses, then whip them eighty stripes, and do not accept them as testimony. Because of all that, they are the evildoers.’

¹⁵³ Abū Dā’ūd, *Sunan*, book IV, Kitāb al-Ḥudūd, bāb 35, trad. 4472, p. 226.

¹⁵⁴ al-Bukhārī, *Ṣaḥīḥ*, IV, Kitāb al-Ḥudūd, bāb 4, tradition 6778, p. 2116.

¹⁵⁵ al-Bukhārī, *Ṣaḥīḥ*, IV, Kitāb al-Ḥudūd, bāb 2, tradition 6773, p. 2115.

A parallel was thus drawn by the precedent set by the above verse traditionally accepted as connected to the false accusation of fornication, but soon transferred to a separate issue, one not adequately dealt with in the *Qur'ān*, indeed, of a situation of which it evidently had no conception:

'The population swelled in 'Umar's day, and drinking *became a common habit* among the people. 'Umar consulted the Prophet's Companions and 'Abdul Raḥmān b. 'Awf suggested use of the 'lightest penalty', so 'Umar adopted eighty lashes.'" ¹⁵⁶

Whether "common habit" suggests a previous period of wine-abstention is not clear. It more likely indicates that wine-drinking permeated all strata of society as Islam spread, rather than only those who could afford the expensive intoxicant found in non-wine producing regions such as the *Hijāz*.

The above remnant of scholarly discussions indicates that the koranic prohibition did not take hold in the period of which this tradition is purported to refer. The following suggests the same problems:

'When 'Umar consulted the Companions on this problem of a penalty for drinking, 'Alī spoke up: "A man drinks, he gets drunk; he gets drunk, he rants; he rants, he is bound to slander somebody (falsely). I think you should flog them eighty strokes of the lash." 'Umar adopted the suggestion. [Mālik adds]: "The *sunna* in our region is that whoever consumes any intoxicant, *whether or not he gets drunk*, [emphasis is mine P.L.] incurs the flogging penalty.'" ¹⁵⁷

¹⁵⁶Abū Dāwūd (al-Ṭayālīsī, d. 819/820 AD), *Minḥat al-Ma'bud fī tartīb musnad al-Ṭayālīsī Abī Dāwūd* (2 parts in 1, Cairo, 1952), Part I, p. 302.

¹⁵⁷Mālik ibn Anas, *al-Muwatta'*, Kitāb al-Ashriba, bāb 1, *al-ḥadd fī al-ḥamar*, tradition 2 (Cairo, 1999), 642. The revolt of Madīna, the stronghold of *ḥadīth* against the free and arbitrary use of *ra'y* and *ḥiyās*, was led by the local Mālik ibn Anas, who died there in A.D. 795. His name is connected to the school later developed under his name. Contrasting Abū Ḥanīfa's later approach, Mālik used the tradition of the Prophet, or local custom as sources of Law after the *Qur'ān*. If *ḥadīths* differed, he gave preference over them to local practice (*'amal*) and only when both *ḥadīth* and local Madinan custom failed to provide him with authority in deciding a point, did he resort to his own "opinion"; preferring even a doubtful *ḥadīth* over that. If custom contradicted *ḥadīth*, since it could not be

The 'eighty lashes' stream of tradition by *kīyās*, analogy, is partly contradicted by the following stream of *ḥadīth* that illustrates a more complex stage in Islamic legal thinking. It also suggests that the society in which this tradition was composed had a more mature legal system—indicated by degrees of guilt, or at least aspired to such:

Ibn Yazīd said: "We used to carry out (the following punishment), regarding the drunkard, until the time of the Messenger of God, and (under) the authority of Abū Bakr and the beginning of the reign of 'Umar, and impose upon him with our hands, our shoes and our clothes (bunched up) until it was late in the reign of 'Umar, who struck with forty blows, until (only) when (the drunkard) was insolent and acted immorally (again?), he would strike him eighty blows."¹⁵⁸

So here we have an expression of forty being increased to eighty only when the offender has re-offended. Or, alternatively, 'Umar's punishment was made to undergo the transformation after adoption of the developing legal notion of *kīyās*, analogy, which came to the fore only in the early 'Abbāsīd period. Certainly contradictory interpretative accounts that the *fuḳahā'* had to sort out.

We see a natural lack of uniformity in the *ḥadīth* literature as it pertains to explaining, defining and documenting the source of the legal punishment for wine-drinking which developed under the influence of local values and conditions. This is illustrated by the following *ḥadīth*:

'Uthmān invited 'Alī to punish a breach of the ban on drinking wine. 'Alī delegated the actual application of the penalty to another and counted out the strokes as they

admitted that the former outweighed the later, the theory developed that somewhere there had to exist another prophetic *ḥadīth* abrogating the inconvenient one, and that upon it, the *idjīmā'* (consensus; acquiescence) was based. His method is shown in his work the *Muwatta'* "the Well-trodden (or smooth) Path," a collection of *tafsīr*, *ḥadīths*, local traditions and customs. There are instances when the practice quoted by Mālik may be pre-Islamic custom taken over unchanged. See Levy, *Structure*, 172, 174.

¹⁵⁸al-Bukhārī, *Ṣaḥīḥ*, book IV, Kitāb al-Ḥudūd, bāb 4, tradition 6779, 2116-7.

fell. He stopped at forty. The Prophet had applied forty lashes; Abū Bakr had applied forty lashes. 'Umar had imposed eighty lashes, and each is *sunna*.'¹⁵⁹

As a natural extension of interpretative discussions which never came to any authoritative conclusion, the process of fixing the penalty was made to continue even into the Umayyad period:

'Abd al-Raḥmān ibn al-Azhar said that... 'Umar in the beginning of his caliphate inflicted forty stripes and at the end, eighty stripes. 'Uthmān (after him) inflicted both punishments, eighty and forty stripes, and finally Mu'āwiya established eighty stripes.¹⁶⁰

In direct contrast to the above representations of social values as reflected in their punishments, yet another stream of *ḥadīth* showing the sheer diversity of discussions is illustrated by the fact that repeated drinking of wine was punished by death—taken all the way back to Muḥammad's order:

1. 'Mu'āwiya b. Abī Sufyān reported the Prophet as saying: "If they drink wine, flog them, again if they drink, flog them, (yet) again, (then) flog them. Again, if they (still persist and) drink it, kill them."¹⁶¹
2. 'The (above) tradition has also been transmitted by Ibn 'Umar through a different chain of narrators to the same effect. This version has: "I think he said for the fifth time: If he drinks it, kill him."¹⁶²
3. 'Abū Hurayra (and Mu'āwiya) reported the Prophet as ordering the flogging of drinkers. For a man's fourth such offence, the Prophet ordained execution.'¹⁶³

¹⁵⁹ al-Ṭayālīsī, *Minḥat*, part I, p. 302.

¹⁶⁰ Abū Dā'ūd, *Sunan*, book IV, Kitāb al-Ḥudūd, bāb 35, trad. 4473.

¹⁶¹ Abū Dā'ūd, *Ibid.*, book IV, Kitāb al-Ḥudūd, bāb 37, trad. 4482, p. 228, lines 17-19.

¹⁶² Abū Dā'ūd, *Ibid.*, trad. 4484, p. 229, lines 2-3.

¹⁶³ al-Ṭayālīsī, *Minḥat*, I, p. 303.

In a developing society, it was inevitable that a reaction to punishment by death appeared, to counter the harshness of the Prophet's decree. Thus, it is added in some traditions that the death punishment in such cases is *not* according to the *sunna* of the Prophet:

'Ibn Dhuwayb reported the Prophet as saying: "...If he does it [i.e. drink] a third or fourth time, kill him." A man (who) had drunk wine was brought [to him, repeatedly] and he gave him lashes. Abandoned was the punishment of killing, and a concession was allowed. Abū Sufyān said: "Take this tradition as a present to the people of Iraq (!)."'¹⁶⁴

Difficulties arose when both the Qur'ān and, thanks to Shāfi'ī, the *Ḥadīth* literature became two authoritative sources for the derivation of Law, towards the mid-second century of Islam. The difficulties arose as old customs everywhere in the Muslim empire were found running counter to the authoritative *Ḥadīth*.

Arising from the problem of inconsistency and contradiction derived from the scholarly discussions, and telescoped back to the time of the Prophet and Companions, a device to smooth out contradictions in prophetic precedent (and indeed of *kiyās*) developed: 'agreement', 'consensus' (*idjmā*). This developed as a tool to verify the state of the Law, and was still very much alive until after the time of Shāfi'ī. Although Mālik had inconsistently linked *sunna* with the *Sunna* of the Prophet, Shāfi'ī was responsible for linking the *ḥadīth* back to its 'roots', the age of Muḥammad in a consistent and systematic way.¹⁶⁵

Shāfi'ī was the first to admit that custom and long-established usage had to be taken into account in any code of Law, and placed them solidly amongst its 'roots'. This he did using the principle of *idjmā*, or the consensus of general—including non-Arab—Muslim

¹⁶⁴Abū Dā'ūd, *Sunan*, IV, Kitāb al-Ḥudūd, bāb 37, trad. 4485, p. 230, lines 1-6. Exclamation mark is mine, P.L. This may refer to the Ḥanafī school deriving from Kūfa, and dealing with a more theoretical approach to the problems of Islamic jurisprudence.

¹⁶⁵ John Burton, *Introduction to the Ḥadīth* (Edinburgh, 1994), x.

learned opinion (that Mālik had earlier applied by way of the opinions of Madīnan scholars) which reflected the will of God. Thus, three of Shāfi'ī's roots of jurisprudence were the Qur'ān, the Sunna, and *idjmā'* to which he added a fourth root, that of *ḳiyās*.¹⁶⁶ It was through 'agreement' that the scholars, under the challenge and influence of Shāfi'ī, took the view, based on the Prophet's *sunna*, that the death penalty had been repealed for technical reasons—including perceived *isnād* weaknesses:

'Shāfi'ī had heard the Prophet's report from only one man—a man of virtue who transmitted *ḥasan* (very acceptable) reports. He is uncertain whether, in this instance, the man's memory was to be relied upon. He knew of a second report mentioning either death or banishment, in a parallel to which a man was brought to the Prophet charged with the fifth offence of drinking, yet was merely sentenced to be flogged. If any of the previous *ḥadīths* are, in fact, 'sound', this last report suggests their repeal. Those other reports on the subject are *mursal*.¹⁶⁷ Further, 'Uthmān had conveyed from the Prophet a celebrated general statement on the penal law: "No Muslim may be put to death except for one of three causes—apostasy, adultery and unjustifiable homicide." As to the 'soundness' of this report, the *Ḥadīth* specialists are in no doubt. The attempt may be made to argue that this general statement does not contradict the reports on the death penalty for persistent drinking, but Shāfi'ī knows of no scholar who calls for other than repeated flogging of the repeating drinker, on the fifth or sixth charge. No drinker was ever executed. So, if the reports on the Prophet's institution of a death penalty for persistent drinking prove to be sound, *it must have been rescinded* [emphasis is mine, P.L.]. In the Qur'ān, God has specified which acts merit killing and which flogging. Killing may not replace flogging except based on information 'soundly' reported from the

¹⁶⁶ Levy, *Structure*, 177-179.

¹⁶⁷ That is, when a link is missing in the *isnād*, or when the name of a companion of the Prophet is missing in the *isnād*.

Prophet,¹⁶⁸ in the absence of contrary Prophet statements or an indication of abrogation.¹⁶⁹

Shāfi'ī's references to the principle of *idjmā'* showed his inconsistent attitude towards the unquestionable value of a particular *ḥadīth* of the Prophet. In this case, on the question of the treatment of the persistent drinker, he used the principle as a tool to dismiss a certain *ḥadīth* report from the Prophet which allegedly advocates the death penalty. It had been *idjmā'* that he had used to decide between the two inconsistent reports from the Prophet.¹⁷⁰

So, in his intellectual muscle-flexing, Shāfi'ī is shown to consider the value of certain Prophet *ḥadīths* according to what the general body of scholars decides, and not necessarily by their pedigree.¹⁷¹ But from the moment when *ḳiyās* gained general approval, it was attacked and opposed most notably by a pupil of Shāfi'ī, namely Aḥmad ibn Ḥanbal (d. 241/855). According to him, *rationalist interpretation* of the *Qur'ān* and tradition is permissible, and he refused to recognise the 'innovation' (*bid'a*) of the *idjmā'*. He was mainly concerned however with sources of *Ḥadīth* rather than jurisprudence.¹⁷² The so called "Gate of *Idjtiḥād*" (supreme effort and endeavour [to arrive at a complete knowledge of the *Qur'ān* and traditions]) was closed after the death of Ibn Ḥanbal, the founder of the last of the four 'orthodox' *madhḥab*h.

¹⁶⁸ Here Shāfi'ī may have had in mind a similar problem—that of the Prophet's alleged stoning of adulterers, in contradiction to the *Qur'ān*'s flogging and/or imprisonment punishment.

¹⁶⁹ Footnotes in al-Shāfi'ī, *Risāla* (Cairo, 1949), bāb al-*ikhtilāf*, p. 575-577. I was referred to this statement by Burton in his *Introduction*, 150, ref. n. 584, according to his Cairo edition of the *Risāla*, 1940, p. 244.

¹⁷⁰ Burton, *Introduction*, 159-160.

¹⁷¹ That is, their *isnād*. *Ibid.*, 153.

¹⁷² See Levy, *Structure*, 179-180.

Although numerous earlier treatises are included, a certain solidification of Islamic Law is presented by the famous treatise of al-Māwardī, *Kitāb al-Aḥkām al-Sultāniyya* ("Book of the Rules of Government"). This is a work that deals with the matter of the types of legal punishment in considerable detail. Al-Māwardī was born in Baṣra in A.D. 972 and died in Baghdād in A.D. 1058. He became a very learned teacher of law and was appointed *qādī*.¹⁷³

In his work, al-Māwardī includes wine-drinking in the category of those offences that God himself had 'defined' the punishments thereof by a legal penalty (*ḥadd*), as opposed to a discretionary penalty (*ta'zīr*) depending on the decision of a judge: drinking of any intoxicating beverage is forbidden not only by the Qur'ān but also according to the classical jurists (i.e. by *uḍmā'*). The punishment for the offender was to be (the conciliatory) forty lashes.¹⁷⁴ He found the authority to include wine-drinking within the *ḥadd* offences from such statements as early as Mālik's, that the crime was to be punished with a *fixed* punishment.¹⁷⁵

So, what of the mass of contradictions, and who followed what punishment, which in itself was derived from *tafsīr*, in the form of *ḥadīth*? Only the Shāfi'ites cling to the practice ascribed to Muḥammad and Abū Bakr; with them the number of blows is consequently (as we have seen) forty or even twenty. The other three legal schools¹⁷⁶ have

¹⁷³ As cited in Herbert J. Leibesny, *The Law of the Near and Middle East: Readings, Cases and Materials* (New York, 1975), 228; C. Brockelman, "al-Māwardī", *Encyclopaedia of Islam*, new ed., vol. VI (Leiden, 1991), p. 869

¹⁷⁴ Al-Māwardī, *Kitāb al-Aḥkām al-Sultāniyya* (Stambūl, ah 1299), 219.

¹⁷⁵ al-Bukhārī, *Ṣaḥīḥ*, IV, *Kitāb al-Ḥudūd*, bāb 2, tradition 6773, p. 2115.

¹⁷⁶ School (of thought)=rite (Ar. *madhhab*). All together, one may say the four "sects" of Sunni Islam, designated the Mālikī, Ḥanafī, Shāfi'ī, and Ḥanbalī, after their respective founders. No Muslim is considered "Orthodox" unless he conforms to the doctrines of one or the other of the principle doctors.

adopted 'Umar's view; drinking wine is punished with the eighty blows; if the transgressor is a slave this number is however reduced to forty, because in the *Qur'ān* (by use of *ḳiyās*) the punishment of the Muslim female slave/concubine/handmaid ("what your right hands possess") is fixed at half the amount of blows with which the free woman is punished (*sūra* 4:25). In short, *idjīmā'* via *ḳiyās* won the day over the individual debates based on finding a definitive statement of the Law through *ḥadīths*.

In summary, the scholars dealing with problems of law and morality incorporated and accounted for the existing and present state of the Law within their current society. In searching for ultimate authority, the *fuḳahā'* attempted to forge a seamless and consistent link to the great and reliable personalities in the Community's past.

Responding to the challenge of apparent inconsistencies, Shāfi'ī attempted to unify the process by "tracing the present state of the Law, wherever possible, to a single personality of the past, the Prophet himself. In doing so, he destroyed the remnants of any smooth chronological line from the Prophet on to the latest period. He rejected what happened in the years following the Prophet's death (in the time of 'Umar), in favour of 'turning the clock back' to what was reported as having been a ruling issued by the Prophet himself."¹⁷⁷

As a result, he and the Schools brought into line a practical application of the Law with the actual ways of society, that the inadequate law of Makka and Madīna might be adapted to larger circumstances arising from the fact that requirements arose that the letter of the Law could not easily accommodate.

The search for *the* legal punishment of wine drinking graphically highlights the necessary usage and adaptation of *ḥadīth* to supply a legal need where none is supplied in the *Qur'ān*. This literature is in itself derived from a need to interpret, understand and place

¹⁷⁷ Burton, *Introduction*, 153.

in history the prophetic figure and connect him to the Revelation he was perceived as being the receptacle of. It, through the very debated issue of wine, equally shows the process of deriving legal formulae through the imperfect mechanisms derived by the Islamic jurists themselves—*naskh*, *kiyās*, and *idjmā'*, and the way in which these tools were found inadequate.

d. KHAMR AND NABĪDH: ḤADĪTH ON THE NATURE OF WINE

A critical issue among Muslim jurists is the raw materials of 'wine' production, of which the writers argued through their definitions. The term *khamr* as it is used in its koranic context is usually translated as 'wine' or 'grape-wine', although in the Qur'ān there is no attempt at definition, nor of defining the limits of fermentation from juice to 'wine'. There is no absolute reason why we should equate the term *khamr* with what we call 'wine', except out of ease of expression. There is, after all, no such thing as the prohibition of "wine" in the Qur'ān. There is a prohibition (more or less) of *khamr*, but precisely what *khamr* means is the prominent, if not the whole point of the examined discussions.

There are references to *khamr* in the Hebrew sources. In Deuteronomy 32:14 one finds: "*ve'dam aynav tishteh khamer*" ("and from the blood of the grape you (will) drink wine"). In Aramaic the term *khamra*' (with an *alif* as the last radical) is translated as wine, and is found in the Talmud, Bava Kama (97, 7 [tzaddik-bet-zayyin]): "*khamra lemareh, tivota, leshakye*" ("Wine belongs to its owner [God], but gratitude goes to the one giving it [to you, the drinker]"). In modern Hebrew, the literary term for wine is *khemer*, and *khamarmoret* has the meaning of "hangover".¹⁷⁸

According to Lane's Arabic-English Lexicon, itself derived from classical Arabic dictionaries as well as popular usage, the term means, "what intoxicates, of the expressed juice of grapes when it has effervesced, and thrown up froth, and become freed therefrom,

¹⁷⁸ The modern word for 'pub' is '*beit shikhar*' (from *sakar*, 'hard alcohol').

and still.” Or it has a common application to “intoxicating juice of anything or any intoxicating thing, which clouds or obscures the intellect.” Lane continues by saying that, according to the traditions, *khānir* was “forbidden when there was not in Madīna any *khāmīr* of grapes; the beverage of its inhabitants being prepared only from dates in their green and small state, or full grown but unripe, or fresh and ripe, or dried...”¹⁷⁹ (The term), he continues, “is also applied to the enigmatic beverage called *nabīdh* (examined below) as *nabīdh* is sometimes applied to wine expressed from grapes.”¹⁸⁰ *Nabīdh* has no apparent precedent in Aramaic or Hebrew.

However, a finer distinction needs to be made between *khāmīr* and *nabīdh*, whose definitions change from author to author and in various periods and various circles. This derives from, again, the multitude of conflicting *tafsīr-hadīths* (which shall be examined).

We will start with, for example, an abstract definition of *khāmīr* provided by al-Rāzī who (probably intentionally) steers well clear of any problematic definition of the constituents of wine and its relationship/contrast to what may make up *nabīdh*:

‘The lexicographers maintain that the basic meaning of the root *kh-m-r* is ‘to cover’. The head veil (of women) is called *khimār* because it covers the head of the woman, while *khāmār* may be a shrub, or a ground depression or hill, which conceals somebody...The etymology shows that by ‘wine’ is to be understood that which ‘veils’ (*satara*) the mind, just as one designates wine as an intoxicating drink (*muskir*) because it closes (*sakara*) the mind...’¹⁸¹

Interestingly enough, Rāzī combines the two koranic terms usually translated as “wine”: *khāmīr* and *sakar*—which is used only once in the Qur’ān.

¹⁷⁹ He is referring to Bukhārī, *Ṣaḥīḥ*, book IV, Kitāb al-Ashriba, bāb 2, tradition 5579, p. 1792.

¹⁸⁰ E.W. Lane, *Arabic-English Lexicon*, book I, part II (England, 1865), 808.

¹⁸¹ al-Rāzī, *Mafātīḥ al-ghayb*, vol. 6, 37, lines 10-13.

As we have seen, the prohibition of wine, although unanimously accepted, produced dissension between the judicial schools, dissension deriving from traditionally authoritative *ḥadīth*, which itself was the result of scholars' attempts in understanding and explaining the *Qur'ān*. Although we have had recourse to examine the relative position of wine within the hierarchy of sin, and the connected issue of defining the punishment for the sinner, the discussions necessarily start from the question: what is wine?

As the Law developed, the word *khamr* eventually became applied not only to wine but through *kīyās*, to any intoxicating and fermented drink. And it is generally agreed that the word as used by Muḥammad is to be understood in this general sense. The remnants of scholarly discussions show this point to be a part of their agenda, deciding that *khamr* was forbidden by the Prophet when there was not *khamr* of grapes in Madīna, the beverages of the inhabitants being prepared from dates:

1. 'Ibn 'Umar said: "Indeed wine was prohibited when there was not anything of it in Madīna."¹⁸²
2. 'Anās said: "Wine was prohibited to us when it was prohibited, and there was not to be found—meaning in Madīna—wine of grapes, except only a little, as most of our wine was made from unripe and ripe dates."¹⁸³

However, this claim propagates a distortion whose purpose was to polemically attack the Ḥanafite view,¹⁸⁴ a form of reasoning connected with the name of a Persian scholar born in

¹⁸² Bukhārī, *Ṣaḥīḥ*, book IV, Kitāb al-Ashriba, bāb 2, tradition 5579, p. 1792.

¹⁸³ *Ibid.*, tradition 5580, p. 1792.

¹⁸⁴ Where the Ḥanafites represent the holders of the provincial point of view, particularly that of Iraq verses those of the holy cities of Arabia, particularly Madīna where prophetic tradition as perpetuated by numerous accounts justified local usage. As Levy states (*Structure*, 170), "The learned of Madīna...compelled by circumstances to supplement the legal provisions of the *Qur'ān*, did so not as the provincial Muslims had done, by an avowed resort to reason, but by deliberately inventing *ḥadīths* of the Prophet to justify their new regulations, or fresh ways of applying koranic laws."

Kūfa, Iraq, known as Abū Ḥanīfa, who died in A.D. 767.¹⁸⁵ For if the verse prohibiting wine was revealed Madīna, it clearly referred in the local jargon to drinks *not* made from grapes, and this would undermine the entire Ḥanafite view on intoxicants *based on the grape*. Clearly the Ḥanafite school could not agree to this obviously theoretical argument about Madīna.¹⁸⁶

Obviously, it was recognised that any meaning of the term *khamr* was lost very early on. Needing to understand the meaning of the koranic text, it was in the early developmental period of Islamic law, that a need arose to represent the authoritative 'Umar as delivering a *khuṭba* (religious sermon) meant to settle the question of defining what constitutes 'wine'. This question arose from the multitude of conflicting exegetical opinions that derived from koranic ambiguity:

'Umar stood upon the *minbar* (raised pulpit), and said: "Now to our topic, the prohibition of wine (was) revealed, and it is from five (things, kinds of fruit): the grape, and the date, and (the) honey, and (the) wheat and (the) barley, and the wine is what possesses (the) reason (of man)."¹⁸⁷

The absolute and detailed certainty of 'Umar's speech shows that *khamr* was a local intoxicant derived from unknown ingredients, only the vaguest memory of which survived

¹⁸⁵ Although he himself left no systematic work of jurisprudence, his disciples compiled his sayings. In these records the school developed and evolved the view that *kiyās* (analogy, in the Ḳur'ān) for determination of legal precedent was not enough. He desired to penetrate the wording of the koranic text to the '*illa*, or cause, motive, of the provisions made which would then be relevant for the legal question at hand. Thus, where the Ḳur'ān forbids wine on the grounds (or '*illa*) that it causes intoxication; therefore when by analogy fermented date-juice is forbidden it must be on the same grounds. As opposed to some of those representing his school of thought, it appears that Abū Ḥanīfa held that the basic text contained some, but by no means all, of the regulations and laws required by society. From the basic text and laws, these fresh ordinances were to be derived from *kiyās*. See Levy, *Structure*, 166-7.

¹⁸⁶ I thank Prof. Sadan for this observation.

¹⁸⁷ Bukhārī, *Ibid.*, tradition 5581, p. 1792.

after the time of the Prophet. It was a relevant term with specific meaning only in the koranic period, for its production was not maintained when Islam began its movement out of its local environment. Al-Rāzī emphasises the fact that what 'Umar was made to say, regarding the five types of ingredients, became wholly insufficient as Islam achieved further spread and encountered more complex techniques such as in wine-production:

'Al-Khaṭṭābī said: "(The use of the word) 'wine' (*khamr*) was used [i.e. by the Prophet] for these five things (only, was) not because wine is made only from these five (raw materials), but that these are specially mentioned because they were well known at that time. Thus, "these five" apply to all that are like them,¹⁸⁸ such as millet, barley, and tree-sap..."¹⁸⁹

There can be little doubt that the wine locally produced in Arabia was more of a narcotic stimulant than the refined vintage which modern connotation applies to the term 'wine'. The question however, then widened to include whether non-stimulating beverages prepared from grapes in a different 'non-fermented' way, or for medicinal purposes, were included in the Prophet's prohibitions. The following separate traditions illustrate the discussion of this problem:

1. 'Ā'ishā the wife of the Prophet reported that the Prophet used to stay with Zaynab, daughter of Djahsh, and drink there honey. (She said): "I and Hafsa counselled each other that if the Prophet enters upon any of us, let her say: "I find the (unpleasant) smell of gum on you." He then entered upon one of them; she said that to him. Then he said: "No, I drank honey at (the house of) Zaynab, daughter of Djahsh, and I will not do it again." Then the following verse was revealed (to the Prophet): 'Why do you (consider to be) forbidden what God has made lawful to you (*sūra* 66:1)..."¹⁹⁰

¹⁸⁸ That is, by analogy, *kīyās*.

¹⁸⁹ al-Rāzī, *Mafātiḥ al-ghayb*, vol. 6, 36, lines 15-17.

¹⁹⁰ Abū Dā'ūd, *Sunan*, II, Kitāb al-Ashriba, bāb 11, trad. 3714, p. 457.

2. '...When 'Umar went to Syria, some Syrians complained to him about the bad climate of their country and its heaviness. They said: "Only this drink helps." 'Umar said: "Drink this honey preparation."¹⁹¹ They said: "Honey does not help us." A man from the people of that land said: "Can we give you something of this drink that does not intoxicate?" He said, "Yes." They cooked it until two-thirds of it had evaporated and one-third of it remained. Then they brought it to 'Umar who put his finger in it and then raised his head and extended it. He said: "This is fruit juice concentrated by boiling. This is like the distillation that you smear on camels' scabs." 'Umar ordered them to drink it. Al-Samit said to him: "You have made it *ḥalāl*, by Allāh!" 'Umar said: "No, by God! O God, I will not make anything *ḥalāl* for them that You have made *ḥarām* for them! I will not make anything *ḥarām* for them that You have made *ḥalāl* for them!"¹⁹²

It can easily be seen that the difficulty concerning ingredients was caused by the fact that people were accustomed to preparing drinks from all kinds of dates, from raisins and other fruits, drinks which only became inebriating if they were preserved a long time, and probably also if they were prepared after certain special methods. This situation made it impossible for jurists to create a line of demarcation between the allowed and the prohibited. They ended up prohibiting the lot.

Throughout the *Ḥadīth*, even the Prophet's favourite wife, 'Ā'ishā, is made to represent a scholarly opinion theoretically questioning the forbiddance of alcohol, usually by way of questioning ingredients, amounts and potency. Was it only wine that was forbidden, or intoxication? Did *nabīdh* count? How was *khamr* to be defined? In attempting solutions to these problems which constitute the remnants of pious debate over

¹⁹¹ The Qur'ān ascribes healing power to honey (*sūra* 16:69): 'There comes out from their bellies (of the bee) a drink diverse of shade, in which is healing for man.' Likewise does the Hebrew Bible (II Kings, 20:7), where the Prophet Isaiah administered honey as a cure to King Hezekiah.

¹⁹² Mālik, *al-Muwatta'*, Kitāb al-Ashriba, bāb 5, trad. 14, last line, p. 645.

the interpretation of the *Qur'ān*, the scholars mentioned *nabīdh* among the drinks normally prepared by Muḥammad's wives and allegedly drunk by him:

1. 'Ā'isha reported: "We prepared *nabīdh* (*nanbidhū*) for the Prophet in a water-skin, the upper part of which was tied, and it (the skin) had a hole (in its lower part). We prepared the *nabīdh* (*nanbidhū-hū*) in the morning and he drank it in the evening and we prepared the *nabīdh* in the night, and he would drink it in the morning."¹⁹³
2. 'Ibn al-Daylāmī said: "We came to the Messenger of God and said to him: "O Messenger of God, do you already know who we are, from where we are and to whom we have come?" He said: "To God and His Messenger." And we said: "O Messenger of God, indeed we have grapes, what should we do with them?" He said: "Make them into raisins." We (then) asked: "What should we do with raisins?" He said: "Prepare the *nabīdh* (*inbidhū-hū*, i.e. process them, ferment them) in your morning and drink them in your evening, and prepare them in your evening and drink them in your morning. Prepare them in skin vessels and do not prepare them in earthen jars, indeed if it is delayed in its pressing, it turns into vinegar."¹⁹⁴
3. 'Ā'isha said: "(Dates) were prepared (*yunbadhū*) for the Messenger of God in a skin tied up at the top and had a mouth. (What) was prepared in the morning, then he would drink it in the evening, and what was prepared in the evening, then he would drink in the morning."¹⁹⁵

The question is of course what is the meaning of the root *n-b-dh*. There is no clear answer to this question, but, as we shall see, what is constant in all of the traditions dealing with this daring subject is that fermentation of some sort was involved.

¹⁹³ Muslim, *Ṣaḥīḥ*, book III, ch. 36: Kitāb al-Ashriba, bāb 9, tradition 85, p. 1590.

¹⁹⁴ Abū Dā'ūd, *Sunan*, II, Kitāb al-Ashriba, bāb 10, trad. 3710, p. 456.

¹⁹⁵ Abū Dā'ūd, *Ibid.*, bāb 10, trad. 3711, p. 456.

In one of Muslim's traditions, Ibn 'Abbās¹⁹⁶ is made to say that the Prophet used to drink *nabīdh* even on the third day of fermentation, but what was left then was poured out:

'Ibn 'Abbās reported that *nabīdh* was prepared for Allāh's Messenger in the beginning of the night and he would drink it in the morning and the following night and the following night and day and the night after that up to the afternoon [i.e. until advanced signs of fermentation?]. If anything was left out of that he gave it to his servants, or he gave orders for it to be poured out.'¹⁹⁷

'Abū Dā'ūd said [in addition to the above tradition preserved in his work, P.L.]: "...given to the servants to drink..." means it is being used before it is spoiled (*yuhṛāk*)."¹⁹⁸

We are told that Muḥammad was made to drink this evidently fermented mixture until the point that it resembled alcohol. However, curiously it was discarded due to personal taste, rather than to any divine injunction, as the Prophet was made to have given the fermented mixture to those closely associated with him.

As according to the above traditions then, Muḥammad drank *nabīdh*, some sort of fermented mixture made from dates. What does this tell us about an historical Muḥammad? From its content, it obviously purports to tell us about such a Muḥammad, and equally obviously (since it has been preserved) was accepted by at least some Muslims as likely to do so. At the very least, it is possible to identify an earlier *layer* of *ḥadīth*, whether or not it relates to an historical Muḥammad:

'Abū Sa'īd came from a journey and his family gave him meat. He asked if it was meat from the sacrifice. They said that it was from it. Abū Sa'īd said, "Did the Prophet of God not forbid it?" They said, "Already there has been a new command

¹⁹⁶ The chief authority on the exegetical *Ḥadīth* was said to have been Muḥammad's cousin 'Abd Allāh ibn 'Abbās (d. around 688). He is therefore traditionally held to be the actual originator of traditional exegesis.

¹⁹⁷ Muslim, *Ṣaḥīḥ*, book III, chapter 36: Kitāb al-Aṣḥriba, bāb 9, tradition 79, p. 1589.

¹⁹⁸ Abū Dā'ūd, *Sunan*, II, Kitāb al-Aṣḥriba, bāb 10, trad. 3713, p. 457.

from the Messenger of God, after you (went away).” Abū Sa‘īd then went out and asked about that. He was told that the Messenger of God said, “I forbade you meat of the sacrifice after three (days), but now eat, give *ṣadaqa*, and store up. I forbade you before to make *nabīdh*, but now make *nabīdh*, but remember that every intoxicant (*muskir*) is *ḥarām*...”¹⁹⁹

This most interesting tradition contains an indication that in a very early period, *nabīdh* was indeed prohibited (as one might have expected). It also contains the discussion regarding “meats of the sacrifice,” clearly prohibited in the *Qur’ān*,²⁰⁰ the prohibition of which is strangely disregarded here.

As if to emphasise the popularity of *nabīdh*, in a matter-of-fact way, not only ‘Umar, but apparently others in Mecca appear to have drunk this mixture, or one under that name:

‘...al-Makhzūmī had some *nabīdh* with him, which he was then taking to Mecca. Al-Aslam said to him, “Umar loves this drink.” He therefore carried a large drinking bowl and brought it to ‘Umar and placed it before him. ‘Umar brought it near to him and raised his head and said, “This drink is good.” ‘Umar drank some of it and passed it to a man on his left...’²⁰¹

There were, then, some quite daring reports claiming that the Prophet and ‘Umar drank *nabīdh*. Religious ideologists made every effort to explain *a posteriori*, that what they drank was a kind of fermented juice, a kind of cider which underwent an extremely short fermentation. However, this effort does not seem to tally with the logic of modern wine production research. It is doubtful however, whether the commentators really cared about the alcoholic strength of *nabīdh*, pointed out by Lammens, who found a poetic fragment

¹⁹⁹ Mālik, *al-Muwatta’*, chap. 23, bāb 4, trad. 8, p. 386.

²⁰⁰ *Sūra* 5:3, if the sacrifice is “to any other (divinity) than God.” Although there is found an alternate attitude in *sūra* 22:36, where one is encouraged to partake of the sacrificial camel, once “God’s name has been invoked” over the beast.

²⁰¹ Mālik, *al-Muwatta’*, trans. Bewley, 378.

according to which *nabīdh* was so strong that it could make the skin of the face drop.²⁰² So where is the historical truth? Was there a purpose for the circulation, persistence and acceptance of these *ḥadīths* which connected the Prophet and 'Umar in one way or another with fermented drinks? Was it circulated and preserved as merely an interesting bit of information about the founder of Islam, or did it somehow contribute to a pious discussion, perhaps purely theoretical, that Muslims, much later, thought important?²⁰³

It is not unreasonable to conjecture that the "*nabīdh* device", here considered a strictly literary motif, was developed out of the need to solve problems related to the disparity noticed between the Law and contemporary usage, and where the Law was being made to conform.²⁰⁴

Surprisingly, all this could not, however, persuade the majority of the religious lawyers (*fuḥahā'*) to declare *nabīdh* allowed—three of the schools and also the *Shī'a* prohibit the use of *nabīdh* (only the Ḥanafī school [examined below] allows it, when used with moderation, for medicinal purposes etc.²⁰⁵). This is reflected in al-Rāzī:

'Abū Dā'ūd related the following according to 'Ā'ishā: "The Messenger of God was asked about (the drink) *bita'*, and he said: "Every drink that makes one drunk is prohibited." Al-Khaṭṭābī said: "*Bita'* is a drink that one makes from honey. And in it [i.e. the above statement of the Prophet] is a refutation of the interpretation of those who say that a small amount of an intoxicating drink is allowed. The Messenger of God was asked about a single kind, the *nabīdh*, but answered with a

²⁰² Henri Lammens, *Islam: Beliefs and Institutions* (trans. D. Ross, London, 1968), 38, n. 2.

²⁰³ I thank Dr. R. Kimber for pointing out these questions.

²⁰⁴ However, I do recognise that certain *ḥadīths* on the subject of 'wine'-drinking by the Prophet, uncomfortable as they are, are deserving of notice and the substance of them may well be genuine without any other legalistic considerations.

²⁰⁵ 'Alī b. 'Umar al-Dabūsī, *Ta'sīs al-Nazar*, as cited in Wheeler, *Authorization and Maintenance of Interpretive Reasoning in Ḥanafī Scholarship*, 148-149.

prohibition against the (entire) group (of intoxicants). This includes not only a large amount of it but also a small amount...”²⁰⁶

The divergence and conflicts in the *Ḥadīth* literature gave ample opportunity for the exegetes/ *fuḳahā'* to debate the definition of fermented mixtures. For example, Ṭabarī in his *Tafsīr*/collection of *ḥadīths* preserves indications that the “strong drink” (*sakar*) of *sūra* 16:67 was defined in different *ḥadīths* both as the prohibited *khamr*,²⁰⁷ but elsewhere as *nabīdh*.²⁰⁸ Furthermore, it was commonly asserted that *sakar* was indeed allowed, but only before its abrogation in *sūra* 2:90-91.²⁰⁹

The situation is further complicated by the remnants of discussions indicating that excepting wine made of grapes, it is not strong drink as such that is forbidden, but only intoxication. Some schools claimed that only *khamr* (of grapes) was forbidden. Other fermented beverages are simply *sharab* (drink) or *nabīdh*, but not ‘wine’:

‘And others said: “Strong drink (*sakar*) has the (same) rank as wine in (its) prohibition, although it is not wine (*khamr*), because they said it is the juice of the date and the raisin when it ferments/strengthens and becomes strong drink causing drunkenness.”’²¹⁰

According to this view, apple wine, date wine, and so on (happily including whiskey) could be declared legal by lexical means. This went as far as to water *nabīdh* down to a far simpler form:

²⁰⁶ al-Rāzī, *Mafātīḥ al-ghayb*, vol. 6, 36, last paragraph.

²⁰⁷ al-Ṭabarī, *al-djāmi' al-bayān*, vol. 14, p. 134, line 2; 135, line 8; 136, line 2, 24; 137, line 22.

²⁰⁸ al-Ṭabarī, *Ibid.*, p. 137, lines 2, 6, 18, 23, 26.

²⁰⁹ al-Ṭabarī, *Ibid.*, 135-7.

²¹⁰ al-Ṭabarī, *Ibid.*, 136, lines 24-5.

'The *nabīdh*...may have been water into which one had thrown into it (*nabadha*) dates to make its saltiness leave. Then the taste of the water could have changed by becoming a little sour.'²¹¹

Early jurists already attempted to arrive at a definition which would prohibit intoxicants of all kinds and to maintain that "every intoxicant is forbidden" (*kull muskir ḥarām*). Then came the Ḥanafites and agreed, but changed the vocalisation of the second word to *muskar*, which grammatically is a kind of infinitive, so that the meaning of this legal maxim became, not that all intoxicants were forbidden, but that what was prohibited was becoming drunk: "Every drink *that causes intoxication* is forbidden";²¹² "The sin of wine is that man shall drink and get drunk";²¹³ "Every intoxicant is *ḥamr* and every intoxicant is forbidden."²¹⁴

Of the special traditions discussing the prohibition of fermented drinks, there may be mentioned the following. It is forbidden or disapproved of to sell raisins if they are used for preparing *nabīdh*, and it is prohibited to mix different kinds of fruits so that the mixture should become intoxicating:

'Ibn ʿAṭāda said: "The Prophet prohibited the mixing up between dates, unripe dates, and dates and raisins, so let him prepare (the drink/mixture), every one (of the two ingredients) separately."²¹⁵

Although this tradition occurs frequently,²¹⁶ each of these ingredients may be used separately for preparing a non-fermented drink:

²¹¹ al-Rāzī, *Mafātiḥ al-ghayb*, vol. 6, 38, lines 20-21.

²¹² Muslim, *Ṣaḥīḥ*, book III, chapter 36: Kitāb al-Aṣḥriba, bāb 7, tradition 67, p. 1585.

²¹³ al-Ṭabarī, *Djāmi' al-bayān*, vol. 2, p. 359, line 12.

²¹⁴ Muslim, *Ibid.*, tradition 74, p. 1587.

²¹⁵ Bukārī, *Ṣaḥīḥ*, book IV, Kitāb al-Aṣḥriba, bāb 11, tradition 5602, p. 1797.

²¹⁶ Muslim, *Ṣaḥīḥ*, book III, chapter 36: Kitāb al-Aṣḥriba, bāb 5, traditions 16-29, p. 1584-88.

'Do not prepare *nabīdh* by mixing nearly ripe dates and fresh dates together, and do not prepare *nabīdh* by mixing grapes and dates together, but prepare *nabīdh* from each (one of them) separately.'²¹⁷

The Ḥanafites define *khamr* (which is *forbidden* in their view) as a product of the grape, while *nabīdh* is defined as an intoxicant made from any fruit or material other than fresh grapes (raisins are subject to a different set of rules which we shall not discuss here) and one *may drink it*, but not to the point of becoming drunk.²¹⁸ All other schools of Law made the rules of *khamr* apply to *all* intoxicants which are indeed all defined as such in religious jurisprudence; *nabīdh* and the technical details concerning it are considered to be a matter of production techniques, with no legal implications.

What we have in all of these traditions is not a reflection of the real world, but an attempt at answers that arose out of the need to understand the koranic text. However, this pious controversy among the exegetes and jurists had the effect of distorting most of the religious and historical picture of the most ancient times, so much so that it is impossible to know what it was really like.

The Qur'ān does not, of course, answer all of the important questions that its rulings on *khamr* raised in the minds of the exegetes, so they had to look elsewhere for their answers. They asked theoretical questions because they occurred to them, and out of the need to understand what God indeed wanted. We should not be surprised that different questioners found different answers.²¹⁹ For example, even within the various legal schools themselves, conflicts existed as a consequence of their differing local interpretations of

²¹⁷ Muslim, *Ibid.*, trad. 24, p. 1585; Mālik, *al-Muwatta'*, chap. 42, bāb 3, trad. 7 (until the word "but prepare from...", p. 643.

²¹⁸ al-Dabūsī, *Ta'sīs al-Nazar* as cited in Wheeler, *Reasoning in Ḥanafī Scholarship*, 148.

²¹⁹ I thank Dr. R. Kimber for raising these points.

language usage in specific cases. Often, as al-Dabūsī²²⁰ shows, for the Ḥanafī school, the authorities' divergent evaluations of specific circumstances are the result of their different local experiences. Although the authorities may agree in the broad outlines of a particular practice, they disagree simply because they regard certain details to refer to different things. This divergence in how the authorities understand specific things is illustrated by al-Dabūsī in the discussion of the constituents of intoxicating fruit juices:

1. 'According to Abū Ḥanīfa and Abū Yūsuf,²²¹ all juice extracted with water and then cooked or used in cooking, in a small amount, is not an intoxicating liquor, and is allowed, like treacle and pulp.'
2. 'Abū Ḥanīfa and Abū Yūsuf say that the infusion of dried grapes and dates, when it is cooked, is allowed to be drunk for medicinal purposes and for spicing food. (While) according to (the Prophet) Muḥammad and al-Shāfi'ī, it is not allowed to be drunk, when it is strong, for medicinal purposes and for spicing food.'
3. 'Abū Ḥanīfa and Abū Yūsuf say that grape juice, when it is cooked so that two-thirds evaporate but a third remains, or a third evaporates than water is added to it and it is boiled on the fire, or it does not boil but the fire is hot enough for it to boil, and it is then strong, it is permitted to be drunk for medicinal purposes and for spicing food because the remaining is that to which water was added until the mixture became under the regimen of dried grapes and dried dates. Abū Yūsuf specifies this. According to Muḥammad and ash-Shāfi'ī it is not allowed to be drunk.'
4. 'Abū Ḥanīfa and Abū Yūsuf say that the skin of grapes, after the juice has been drained, when water squirts from them after the juice has been extracted with water, and they are cooked over a fire, and are left until the mixture becomes strong and boils, if it boils a little it is not considered an

²²⁰ al-Dabūsī, *Ta'sīs al-Nazar* as cited in Wheeler, *Reasoning in Ḥanafī Scholarship*, 148-149.

²²¹ The thinking of the Arabian Mālik b. Anas (d. 179/795) was represented by his students, particularly Muḥammad b. al-Ḥasan al-Shaybānī who died about ten years after his teacher. His fellow pupil was Ya'qūb b. Ibrāhīm, better known as the Kāḍī Abū Yūsuf. Both are instructive for their views of the Iraqi scholars, especially Abū Ḥanīfa (d. 141/758). John Burton, *The Sources of Islamic Law: Islamic Theories of Abrogation* (Edinburgh, 1990), vii.

intoxicating liquor. According to Muḥammad, in either case it is forbidden.²²²

Here, in these remnants of their discussions, the authorities disagree because of their different assumptions regarding what produces intoxicating liquor made from fruit juice, when it is used for medicinal or cooking purposes. Abū Ḥanīfa and Abū Yūsuf allow certain concoctions not considered sufficiently intoxicating, which Muḥammad does not allow, based on their particular experiences. This is another example of *idjmā'* taking precedence over a prophetic *ḥadīth*.

Tradition, which is the best source for understanding the origin of several institutions,²²³ shows that the question of the definition of wine belongs to the much-debated ones. When one considers the related question of liquid containers, one meets the same regional differentiation met in the question of constituents. The flexibility of local *ḥadīths* may be illustrated in one that is found very frequently in the classical collections, which runs, in this case according to Muslim, as follows:

'Some (men of [the tribe of?]) 'Abd al-Kais went to the Messenger of God and said: "O Prophet of God!, indeed (we are a) tribe from Rabī'a. And between you and us are the polytheists of Muḍar. So that we cannot reach you except in the sacred month. So give us a command (concerning) what we have to order from our tribes (-people) so we will enter Paradise if we accept it.

'The Messenger of God said: "I order you four (things). And I forbid you four. Serve God and do not associate with Him anything. And perform the *ṣalāt*. And pay the *zakāt*. And fast the (month of) Ramaḍān and deliver the fifth (part of booty). And I forbid four (things). *Al-dubba, al-ḥantam, al-muzaffat*, and *al-naḳīr*." They said: "O Prophet of God! What do you know of the *naḳīr*? He said: Well, (it

²²² 'Alī b. 'Umar al-Dabūsī, *Ta'sīs al-Nazar*, 40, as cited in Wheeler, *Applying the Canon in Islam*, 148-149. Also see Abū Yūsuf, *Kitāb al-Kharāj*.

²²³ Or, as G.W. Anderson puts it: "The study of tradition history is the attempt to go behind the written record and to discover the factors which moulded the traditions which it contains." *A Critical Introduction to the Old Testament* (Great Britain, 1962, first published 1959), 55.

is) a palm-trunk that you hollowed. Then you pour small dates in it. Then upon them water. When the fermentation is finished, you drink it. (With the effect that) one man hits his cousin with the sword." He said: "And among these men was one who received a blow in this way." He said: "And I concealed it out of shame from the Prophet of God." So he (?) said: "And from the vessels we drink, O Messenger of God?" He said: "In 'leather' skins, which are smeared upon their mouths (with pitch)." They said: "O Messenger of God, indeed our land has many mice, so that no skin can be (kept) complete." Then the Prophet of God said [three times! P.L.]: "Even if the mice eat them...!"²²⁴

Although these containers were said to have been used for the preparation of fermented drinks, it is said that the *anṣār* (helpers, or those the Prophet found in Madīna) or other people, complained of their difficulty in finding the (expensive) skins necessary for preserving drinks without their becoming fermented. Then, the Prophet was made to have withdrawn his prohibition, wholly or partly:

1. 'Djābir said: "The Prophet of God prohibited (this type of) container," then the Anṣār said: "We cannot get around it," and he said: "then do not (do without it), in that case."²²⁵
2. 'Abdullah ibn 'Umar said: "When the Prophet prohibited (using) the containers, it was said to the Prophet: "Not all the people will find skins," then he allowed them (to prepare) in clay jars, not pitched [probably meaning sealed]."²²⁶

The above traditions can be looked at from another perspective for if the matter of the prohibition of wine drinking is looked at in a general way, other—more practical—grounds could be suggested for it. Wine appears to have been imported Syria, and so must have been a luxury article. The wine was kept in skins, which once broken, would have spoiled

²²⁴ Muslim, *Ṣaḥīḥ*, I, Kitāb al-īmān, chapter 1, tradition 26, p. 48-9.

²²⁵ Bukhārī, *Ṣaḥīḥ*, IV, Kitāb al-Ashriba, bāb 3, tradition 5592, p. 1795.

²²⁶ Bukhārī, *Ibid.*, tradition 5593, p. 1795.

the wine unless drunk at once. This may have been a factor leading to excessive drinking and becoming drunk.²²⁷

Since the issue was dealt with inadequately in the *Qur'ān*, understanding the prohibition of fermented drinks was of interest to the *fuḳahā'*, precisely because it was directly linked to fascinating and challenging philological and literary matters suited to their way of arriving at conclusions. But as a by-product of their theoretical debates, already in the second century, although the sanction of grape-wine was out of the question, the theologians of Kūfa²²⁸ allowed for such wide interpretation of the critical question of what constitutes wine that even "well-intentioned people widely availed themselves (of intoxicating substances)."²²⁹

However, from this mass of material, the remnants of evidently highly intense and diverse pious discussions, there is no way we know the true state of affairs with respect to agriculture and the consumption of intoxicants in Madīna and elsewhere, both during and well after the time of the Prophet. But we learn from these materials at least the questions that the pious were asking in the first two centuries of Islam. In their discussions, they created stories connected to the life of the Prophet as they saw him, long after his death. These stories were the tools from which we can reflect the nature of the pious debate,

²²⁷ W. M. Watt, "Islam and Wine-Drinking," *Studi in Onore di Francesco Gabrieli* ("La Sapienza," Rome, 1984), 847.

²²⁸ Al-Kūfa was an "active intellectual centre in the early Islamic period, close to the large Jewish communities of central Babylonia, with their famed academies, which continued to operate (or, perhaps, came to operate once again) during the early Islamic period. These communities, which concentrated on traditional Jewish learning had sophisticated traditions of theology and communal history, that could have served as a ready source of information for the early Muslims." Fred Donner, *Narratives of Islamic Origins: The Beginnings of Islamic Historical Writing* (Princeton, 1998), 159.

²²⁹ Muḥammad ibn Sa'd (d. Baghdād, 845 AD), *Kitāb al-Ṭabaḳāt al-Kabūr*, vol. VI (Leyden edition), p. 67; p. 175 line 20.

ultimately derived from the need to completely understand Revelation: Does God prohibit *khamr* because it is *khamr*, or because it has some quality that might also be found in other drinks? Or, does He prohibit *khamr* simply as an arbitrary test of our obedience, or because He knows that abstaining from *khamr* is good for us. These, according to Richard Kimber, are fundamental theological questions, not trivial matters of whether we can or cannot drink while pretending to be good Muslims. Indeed, Judaism discusses exactly the same issues with exactly the same seriousness—like the Muslims, always have done. The *hadīth* materials are the residue of the discussions of the first generations.

PART FOUR

THE SOCIAL CONTEXT: MEDICINE, PHILOSOPHY, AND POLEMICS

a. In the cultures of the Mediterranean where vines grow, wine is usually drunk, and is part of ordinary life—mostly it is not drunk to excess.²³⁰ In the Arabia of Muḥammad's time, however, because wine was a luxury, and as we have seen came in skins, it would not have been the drink of whole families.

On the contrary, wine-drinking was associated with social get-togethers, and as we have preserved in the sources, often led to drunkenness, at least as the later jurists portrayed. This may well give some justification for its prohibition in Arabia, but it may be argued to some degree, not for lands where it is a family beverage and not liable to such abuse. Since wine is so much part of the culture in those parts of the world where vines grow easily, the question presents itself whether the prohibition of wine may essentially belong to cultures in lands where the vine does not grow—such as in the deserts of Arabia.

In fact, as we have seen, the *Rekhabites* (Jeremiah 35, see page 13), whose members all refused to drink wine, were also commanded to live in tents and not to cultivate cereals or vines. In other words, avoidance of wine is there portrayed as one aspect of nomadic life. This gives some grounds for arguing that "the Islamic prohibition of wine is extended to all cultures what is certainly a feature of only one particular type of culture."²³¹

Nevertheless, Islam claims to be a universal religion.²³² This could mean that it is suited to many different races of people living in many kinds of culture. There are many peoples,

²³⁰ Note the amusing remark in Samuel where at the feast of Tabernacles/Tents (i.e. the modern festival of *Sukkot*), the 'holiest and the greatest of Hebrew feasts' (Josephus Ant. VIII, iv:i), Eli suspects that Anna was tipsy (I Sam., 1:14-15) which shows that drinking of the new wine was not unknown.

²³¹ W. M. Watt, "Islam and Wine-Drinking," *Studi in Onore* ("La Sapienza," Rome, 1984), 849.

²³² However, the fact is that the "People of the Book" were exempted from Islam provided they paid the poll tax. Thus, one may conclude that the Prophet had recognised the impossibility of turning

however, who have cultivated the vine for centuries, and who have found the drinking of wine beneficial and indeed health-giving. How can the Islamic faith be recommended to such people when it includes the prohibition of wine drinking? If it could be shown that the results of wine drinking were entirely or mainly bad, there would be grounds for prohibition. The experience of peoples who normally drink wine, however, shows that its effects are on the whole beneficial (or at least not harmful).

Even from the early Islamic period, Arab physicians were thrown into a quandary by the prohibition of their principal medicine. The great Islamic doctor-philosopher Ibn Sīnā (Avicenna) (d. Buḫārā, A.D. 980-1037), in charge of the hospital in Baghdād, brought together much of the medicinal knowledge of the ancient Greeks, with observations of his own on the effects of wine in different persons under different conditions. In the *Qānūn fi 'l-ṭibb*, book V, his rule 860 concludes with a thought that might have some bearing on the success of the prohibition in desert lands: "Wine is borne better in a cold country than in a hot one."²³³ Nor did the great doctor neglect the benefits of wine to his own person:

'If a problem was too difficult for me, I returned to the mosque and prayed, invoking the Creator of All Things until the gate closed to me was opened and what had been complex became simple. Always, as night fell, I returned to my house, set the lamp before me and busied myself with reading and writing. If sleep overcame me or I felt the flesh growing weak, I had recourse to a beaker of wine, so my energies were restored.'²³⁴

At around the same time, Saadia Ben Joseph ("Saadia Gaon", b. Egypt, A.D. 882-942) was head of the celebrated Babylonian Talmudic academies of Sūra and Pumbeditha. His *Book*

every man into a Muslim, even in Arabia. Still more significant is the place accorded in Islam to Mecca, which could have had little meaning for anyone outside the tribes of the peninsula but nevertheless held an important place in the religion of Muḥammad.

²³³ Translated by Cameron Gruner as the *Canon of Medicine* (England, 1930), 89.

²³⁴ *Ibid.*, 94.

of Beliefs and Opinions constitutes the first systematic presentation of Judaism as a rational body of beliefs, doubtless influenced by his Islamic environment. Saadia's treatment of wine, here as a medicine, is likewise wholly positive:

'The cause of the patient's illness is an overabundance of blood. Now if one were to say to him: "Do not eat meat and do not drink wine", he would thereby be contributing to his recovery.'"²³⁵

Obviously there was constant contact between Jewish and Muslim scholars within the 'Islamic world'. Indeed, Islamic notions and approaches which formed over centuries in the developing civilisation of Islam, impacted greatly upon Jewish theology and philosophy. Thus no need was apparently felt by Saadia to go into any detail of defining wine as a fermented drink, nor its constituents. However, Saadia, in an almost anti-Jewish polemic, continues his examination of wine-drinking by noting the negative side:

'As for wine, they say, it is beautiful in colour, goodly in fragrance, and pleasant of taste. It renders him that is sad joyful, the miserly generous, the cowardly brave. Scripture pays tribute to these sundry virtues [of wine] when it says: "And wine that maketh glad the heart of man, making the face brighter than oil, and bread that stayeth man's heart (Ps., 104:15)." Now I studied this theory of theirs carefully and I found it to be, for the most part, fal-fetched. Also they regard only the good consequences of addiction to eating and drinking and overlook the ill-effects.'"²³⁶

There are two possible readings of this polemic: 1. that the philosopher is arguing against the Jewish use of wine and its biblical precedent, and 2. that he is suggesting that wine was in *widespread* use in tenth century Iraq within his Muslim environment. He continues:

'They forget also that wine, when it is drunk raw, has the effect of making the brain dry, and when it is drunk mixed, that of rendering it moist. It also constrains the mind and does injury to the intellect, as Scripture says: "Wine is a mocker, strong

²³⁵ Saadia Gaon, *Book of Beliefs and Opinions*, translated from the Arabic by Samuel Rosenblatt (Yale, 1955), "Command and Prohibition," 155.

²³⁶ Saadia Gaon, *Ibid.*, "Ideal Human Conduct," 369.

drink is riotous; and whosoever reeleth thereby is not wise (Prov. 20:1).” Furthermore, excessive drinking produces a softening of the nerves, tremors, agitation of the blood, chronic fevers, progressive weakness of the stomach, and feebleness of the liver, besides causing intense pains, as Scripture says: ‘Who crieth: “Woe”? who: “Alas”?...They that tarry long at the wine (Prov., 23:29-30).’”²³⁷

The above described use of wine is a somewhat conciliatory attitude towards the Islamic position, on the one hand recognising the benefits of the evidently widespread use of wine, and on the other, justifying the koranic existence of its prohibition. Saadia after all had to work in an Islamic environment, and the prohibition of wine, as a defining factor, was then quite well developed, at least as legitimate topic of scholarly debate. But his use of Jewish source material also points to an apologetic attitude, in response to Islamic polemics attacking the Jewish use of wine in the Hebrew Scripture.

Likewise, Maimonides, a Jew from Cordoba in Spain, who became personal doctor to the Sultān Saladin/Salaḥ al-Dīn in the 12th century, had to find a middle road between the beneficial usage of wine within the framework of its prohibition. He wrote:

‘It is well known among physicians that the best of the nourishing foods is the one that the Muslim religion forbids, i.e. wine...It is rapidly digested and helps to digest other foods...The benefits of wine are many if it is taken in the proper amount, as it keeps the body in a healthy condition and cures many illnesses. But the knowledge of its consumption is hidden from the masses. What they want is to get drunk, and inebriety causes harm.’²³⁸

Elsewhere, Maimonides proscribes wine (and song) to improve the sultān’s mood, despite the forbiddance. In A.D. 1195, in response to a letter from Sultān al-Afdal (the eldest son of

²³⁷ Saadia Gaon, *Beliefs and Opinions*, “Ideal Human Conduct,” 370. Curiously, one may see an almost exact rendition of this Opinion in Shakespeare’s *King Henry IV* (Part II, Act 4, Scene 3), where Falstaff enlightens us on the qualities of Sherry.

²³⁸ Maimonides, *On the Causes of Symptoms*, ed. by J.O. Leibowitz and S. Marcus (California, 1974), 55, 57, 59.

Saladin), Maimonides wrote "The Regimen of Health" (based on Galen's *De Sanitate tuenda*), and soon after, "The Treatise of Accidents." Although in Jewish *Halakhic* Law, it is possible to proscribe any treatment to the dying, even if it contravenes the Law, there is no evidence that the Sultān was in any such state. Maimonides was simply aware that the Sultān would have been only too happy to drink wine and hear songs, had they not been forbidden. When he was sick, Maimonides could thus 'dare' to advise such treatments in the form of a medical prescription backed up by some quite doubtful philosophy.²³⁹

b. The problems faced by Jewish and Islamic philosophers regarding the question of wine, its prohibition or permissiveness, and its moral value were very similar. The philosophical value or detriment of wine, derived from contrasting attitudes in both Jewish and Islamic Revelation, is used in polemical and philosophical writings by both sides. Aḥmad ibn 'Abdullah al-Ma'arrī (b. A.D. 973, near Aleppo, Syria, d. 1058 A.D.) used wine as a polemical device in order to belittle Jewish Revelation (of which a Muslim claims to be a faulty doctrine):

"Although your mouths hymn Allah One and Peerless,
Your hearts and souls from that ye owe Him shrink.
I swear your Torah gives no light to lead us,
If there 'tis found that wine is lawful drink."²⁴⁰

Taken out of context, the verse might be read as a Muslim's expression of the authority of the Qur'ān, which forbids wine drinking, against the 'corrupted' Jewish Pentateuch. However, Ma'arrī's objection to wine drinking, as we learn from poems in the *Luzūm*, is non-religious:

²³⁹ Elinor Leiber, "The Medical Works of Maimonides: A Reappraisal," in Fred Rosner and Samuel Kottech (eds.), *Moses Maimonides: Physician, Scientist and Philosopher* (U.S.A., 1993), 16-17.

²⁴⁰ Al-Ma'arrī, *al-Luzūm*, II. 201, 2, as cited in Reynold Alleyne Nicholson, *Studies in Islamic Poetry* (Cambridge, 1921, reprinted, 1969), 167.

1. 'Say to wine, which is contrary to Reason and ever causes the warrior's sword to be unsheathed,
'If thou wert interdicted by nothing but pain (after pleasure),
Thou wouldst have been allowable to the drinker;
But thou art banned by Sovereign Reason, so get thee gone into
the dusty soil!'²⁴¹
2. 'Men say wine destroys old grief's that bide in the breast;
And were it not destructive to the intellect, I should have been
a friend of wine and jollity.'²⁴²

As Nicholson has pointed out, his polemical meaning is: "If the Torah sanctions wine drinking, the Torah misguides us: we must obey Reason, not Revelation." Nicholson continues by saying the fact that in this instance he happens to agree with Muḥammad leaves the general principle untouched. All religions are mixed with falsehood and, so far, stand on the same level when he says: "Follow Reason and do what it deems good..."²⁴³

NON-RELIGIOUS POETICAL WORKS DEALING WITH RELIGIOUS THEMES

- a. The examination of religious topics and materials such as wine-drinking in books which are not religious *per se* can occasionally provide elements of great importance parallel to those that appear in the religious literature itself. This is because in the latter, as we have seen, facts have often been interpreted, changed, taken out of context or even deleted (this is, of course, not true of all writers of religious books). In books outside the domain of religious writing, however, whole chapters may appear which the author would not have dared to even mention in a religious context.

²⁴¹ Al-Ma'arrī, *al-Luzūm*, I. 144, 2, as cited in Nicholson, *Ibid.*, 168.

²⁴² Al-Ma'arrī, *al-Luzūm*, II. 312, 14, as cited in Nicholson, *Ibid.* Also see II. 361, 12: "If wine were lawful, I would not drink it as it makes my reasonableness weigh light in the scale" (*Ibid.*).

²⁴³ Al-Ma'arrī, *al-Luzūm*, I. 394, 8, as cited in *Ibid.*, 167.

b. Considering the favourable position wine traditionally held in Iranian culture, it is perhaps unsurprising that in early Islamic poetry, prompted by the meeting of the Arabs and Persians, wine (and love) still figured as a major theme expressing the beauty and character of the contemporary world. To highlight this connection, I would here like to survey the range of Persian poetry and literature that features wine as a central theme.

As early as the eighth century a school of Persian-Arabian Bacchic poetry (i.e. wine-poetry, the modern critical terminology for the Ar. *khamriyya*) grew up, in which wine became the focus of a romantic philosophy. Prohibition took on quite a different aspect as Islam conquered lands whose wines had long been their pride and joy. It was one thing to give up the 'headache mixture' of Arabia (in reference to *sūra* 37:47), quite another to throw away a cellar of treasured vintages from Syria or the Lebanon.

The poems treat of wine and love in complex and elegant allusions. In the *Early Persian Anthology* compiled by R.A. Nicholson,²⁴⁴ he renders into poetical English some representative examples of the Persian-Islamic wine-song composed during the ninth and tenth centuries. He includes, among others, the following fragments:

1. Choice wine, whose bitter strength can sweeten best
the embittered mind, and flood the air with colour.²⁴⁵
2. So bright 'tis, when it trickles—You'd say from pearls is trickling
—So clear 'tis, when you pour it—...how sweet and fair to see!
Therein the radiant shower, and golden-yellow rays
—and poppy and saffron flower.
—Down from the goblets mouth, cornelian red and fine;
in the hollow of your palm, would know, nor cup from wine.²⁴⁶
3. They drank of wine so pure and old, Its body seemed to be ensouled;

²⁴⁴ Reynold Alleyne Nicholson, *Studies in Islamic Poetry* (Cambridge, 1921, reprinted, 1969).

²⁴⁵ Abū Manṣūr al-Daḳīkī, *Lubāb al-Albāb*, II. 13, 7, as cited in Nicholson, *Studies*, 9.

²⁴⁶ Al-Kisā'ī of Merv [latter half of the 10th century], *Lubāb*, II. 34, 20, as cited in *Ibid.*, 11.

And through them flowed that essence fine,
As fire bright through coal doth shine.²⁴⁷

However, al-Ḥasan Abū Nuwās; the ninth-century poet who was patronised by the Barmecid clan and later became the *nadim* of the Caliph al-Amīn (ruled Baghdad, A.D. 809-813), was the greatest of the poets who celebrated both the joys of wine and the beauty of the boys who served it. Already in A.D. 800, he had written: "To the Persians, Paradise is called Khoullar"—a village in the mountains beside Shīrāz, the region that supplied Baghdād with wine under the caliphs.²⁴⁸

c. There is also another kind of intoxication derived from the Persian literary tradition, the intoxication of the intellect, which Arberry calls the "Philosophy of Unreason." He believes this to be the most likely implication of the wine-vocabulary of those such as 'Umar Khayyām.²⁴⁹

No poet has ever treated wine as such a central theme as has this Persian poet. His *Rubā'īyāt* (sing: *rubā'ī*), a long set of individual four-line groupings, were linked by Edward Fitzgerald to form a single poem in which wine takes on an almost living character:²⁵⁰

1. You know, my Friends, how long in my House.
For a new Marriage I did make Carouse:
Divorced old barren Reason from my Bed,

²⁴⁷ Halila [composed before A.D. 1050], *Lubāb al-Albāb*, II. 65, 19, as cited in *Ibid.*, 10.

²⁴⁸ Irwin, *The Arabian Nights*, 154.

²⁴⁹ A.J. Arberry, *Sufism: An Account of the Mystics of Islam* (London, 1950), 116.

²⁵⁰ 'Umar Khayyām (d. 1131 A.D., Persia) could, perhaps, be dismissed as a poet of little account in the history of Islam, were it not for the fact that he was also one of the greatest mathematicians and astronomers of the Middle Ages. He led the thought of his time in algebra, physics and geography, as well as calculating the most accurate calendar yet devised, with a measurably smaller margin of error than the Gregorian calendar of 500 years later, which is the one we use today.

And took the Daughter of the Vine to Spouse.²⁵¹

2. The Grape that can with Logic absolute,
The Two-and-Seventy jarring Sects confute:
The subtle Alchemist that is in a Trice,
Life's leaden Metal into Gold transmute.²⁵²

To 'Umar, the koranic promise of wine deferred until the Afterlife is a sham:

I must abjure the Balm of life?
I must, Scared by some After-reckoning taken on trust,
Or lured with Hope of some Diviner Drink,
When the frail cup is crumbled into dust!²⁵³

d. One may directly connect the Indo-Iranian attitudes toward wine with the spirit of the corresponding (Persian) Šūfī attitude as expressed by literature in its ecstatic and poetic forms. The development of this school of poetry is not altogether free of difficulties and complexities, for several Šūfī poets were simultaneously earning their livelihood by courting kings and princes. Many of their lyrics must be regarded as double allegories—the reference is made simultaneously to the Divine and to the earthly patron whose favour was no less difficult to win.

Among the Šūfī mystical allegories, the allegory of wine raises its own separate problems. There are those who take every reference to wine as intending spiritual intoxication (even 'Umar *Khayyām* has sometimes been interpreted after this fashion). But it is a difficult position to maintain consistently.

²⁵¹ Edward Fitzgerald (tr.), *The Rubaiyat of Omar Khayyam* (New York, 1967, first published in 1859), first translation quatrain XL, p. 48.

²⁵² *Ibid.*, quatrain XLIII, 58.

²⁵³ *Ibid.*, second translation quatrain LXIV, 77.

While one can be confident that the austere mystics were wholly innocent in their use of this curious imagery, others were evidently accused of drinking wine themselves. In defence of those mystical poets; Muḥsin Fayḍ, a Persian Ṣūfī author of the A.H. 11/A.D. 17th century wrote a pamphlet entitled *Risāla-yi Miṣḥwak*. This, in order to clear the Ṣūfīs of charges made by their orthodox critics based on too literal an interpretation of their technical vocabulary, much of which revolves around the themes of intoxication through love and wine. Arberry has conveniently compiled a list of wine-terminology in this work that came to represent nothing less than the ultimate religious experience:

<i>sharab</i> (wine):	the ecstatic experience due to the revelation of the true Beloved, destroying the foundations of reason.
<i>Sakī</i> (wine-bearer):	reality, as loving to manifest itself in every form that is revealed.
<i>Djam</i> (cup):	the revelations of (Divine) Acts.
<i>Sabu</i> (pitcher), <i>khum</i> (jar):	the revelations of (Divine) Names and Qualities.
<i>Baḥr</i> (sea), <i>kulzum</i> (ocean):	the revelations of the (Divine) Essence.
<i>khumkhana</i> (vault):	the whole seen and unseen world is like a vault containing the wine of Being and the inborn love of God;
<i>paymana</i> (goblet):	where each atom of the world, according to its receptivity and particular aptitude, is a goblet of the wine of His love, and the goblet is full of this wine.
<i>Kharabat</i> (tavern):	pure unity (<i>waḥdat</i>), undifferentiated and unqualified.
<i>Kharabati</i> (tavern-haunter):	the true lover who is freed from the chains of discrimination, knowing that all acts, and the qualities of all things, are obliterated in the Divine Acts and Qualities. ²⁵⁴

The fact is that the most famous of the great poets who rebelled against Islamic domination of their heritage and their lives were the Persians, who made liberal use of wine in their romantic expressions: Abū 'l-Kāsim (Maṣṣūr) ("Firdausi", A.D. 935-1020), composer of the Persian national epic, the Book of Kings, the *Shāhnāma* (*Shah Nameh*); 'Umar bin Ibrāhīm

²⁵⁴ As cited in Arberry, *Sufism*, 113-114.

al-Khayyāmī ("Omar Khayyām", d. A.D. 1123), one of the profoundest scholars of his day; Musharrif al-Dīn ("Sa'dī", A.D. 1184-1292), influenced by Şūfīsm, and died in Shīrāz, we are told, at the age of 108; and Shams al-Dīn Muḥammad ("Ḥāfiz," b. Shīrāz, d. A.D. 1389), whose wine-poems are "quoted by Persians more than Shakespeare's are by the English."²⁵⁵

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²⁵⁵ John Charles Edward Bowen, *Poems from the Persian* (London, 1964, first published 1948), 92.

CONCLUDING REMARKS

a. This paper has touched upon a number of issues arising from an examination of the remains of theoretical debates which derived from what is traditionally portrayed as a clear koranic prohibition of *khamr*, intoxicants. Factors motivating this study included questions such as what kind of religious background precedents acted upon Islamic Revelation, the exegetically derived *Ḥadīth* and related legal materials to cause such a drastic prohibition? Why did a situation of long and tiresome debate develop? Did 'current practice' force the Law to conform to existing social positions? How was no punishment ever uniformly agreed upon for such a serious 'crime against God'? How did the *Ḥadīth* literature act together with the *Qur'ān* document, and where and how were problems found and solved when conflict arose within and between the two sources of jurisdiction? Moreover, the mere fact that the debates and their sources have been preserved leads us to approach the fundamental question: How did the early generations respond to the references to *khamr* (and *sakar*) they found in the *Qur'ān*?

b. To address these fundamental questions, the cultural context was taken into account. In the Indo-Iranian cultures, intoxicating drinks had been elevated to a lofty position of religious significance. In *distinct continuation*, the praise of wine, not uncommon in pre-Islamic poetry, remained a favourite topic of Muslim poets and mystics. And at Court, wine was drunk at revelling parties as if no prohibition existed at all—especially noting the court life as represented in the "Arabian Nights" collection.²⁵⁶ Even caliphs—the highest rank of ruler—anticipated Paradise by giving parties in gardens that closely resembled the Promised Land of the *Qur'ān*—neither running streams nor soft couches, nor "wide-eyed houris," nor

²⁵⁶ E.W. Lane, *The Arabian Nights Entertainment* (London, 1841), 1, 214. Alongside alcohol, drugs, music and dance are presented in this literature as normal behaviour, without any expression of disapproval.

fruit nor wine were wanting. We read of wine parties given in sumptuously decorated rooms, and of a class of courtly participants in these activities, the *nudamā*, or cup-companions.

Poems were written in praise of intoxication, good fellowship and beautiful cup-bearers—a reality in literature at least. Šūfī poets wrote poems in praise of wine and beautiful boys. Perhaps images of the cup of wine and the beautiful boy were intended as metaphors for the intoxication of divine ecstasy and divine beauty, but many Muslims were doubtful, and controversy raged over whether the verses were to be read literally or not.

c. Only *after* considering the favourable attitude of poets, philosophers, theologians and the ruling classes throughout the periods of Islamic history towards wine—as *khamr*—quite clearly ‘prohibited’ in the Qur’ān—should one attempt an objective examination of the circumstances of the prohibition in the earliest times of the proto-Islamic community.

Islam, in both its religious and literary expressions, represents a continuation of two important and contrasting institutions of the Semitic and classical civilisations. Within the present context, this is represented in an uncomfortable relationship of the forbiddance of wine in a formal, legal and ritual sense, as well as its elevation to a position of social necessity as represented in some Muslim literature and poetry.

While there can be no doubt that the rise of Islam does mark a turning point in history, the tendency—inherited from the Islamic tradition’s own Origins stories—to see this change as an abrupt one coming suddenly with the career of the Prophet Muḥammad and the Islamic conquests that followed, is one that is very misleading. This is because it obscures important historical continuities spanning the supposed ‘divide’ between the Islamic and pre-Islamic ‘eras’. Like fasting and pilgrimage, the institution of the prohibition of wine was a clear remnant of a pre-Islamic practice slightly varied by the spirit of the new religion.

Islam consciously developed as a new religious community distinct from Pagans, Christians and Jews. Thus, at the same time were introduced the prohibitions of various pagan customs such as the drinking of wine and the eating of *ḥazīr* (pig), the observance of which was perceived as conducive to the cultivation of a general attitude of religiosity.

These prohibitions served as an occasion for a far wider ruling: the Muslims and the adherents of other religions had to have different laws altogether. Law was part of the prophetic Message, with the consequence that the followers of different prophets could be properly judged only by those who believed in their respective revelations. In pagan times, we are to understand that people did not care what religion their judges had, as long as they were competent and inspired men. With Islam—according to the new conception—Law, even civil law, had become part of the Message contained in one heavenly Book, but was sent in different *forms* to different peoples.

But why was the *Qur'ān* at odds in this case with the Jews' and the Christians' own scriptures? The result of these debates was, as Donner says, that the "broader identity as Believers gradually gave way to a more sharply defined identity as Muslims, that is, as confessionals separate from Christians, Jews, and other monotheists. The distinctive markers of this new confessional identity were acceptance of the *Qur'ān* as their scripture, and Muḥammad as their Prophet,"²⁵⁷ together with the social and legal system that was related to him, and thus, to the *Qur'ān* and God.

d. In the *Qur'ān* (the stable book form which we know and designate by this name), one can perceive a traditional development of the prohibition of wine in a fairly logical and clear manner—one step following another. However, the *Qur'ān* can be seen to be profoundly ahistorical; it is simply not concerned with history in the sense of development

²⁵⁷ Fred Donner, *Narratives of Islamic Origins: The Beginnings of Islamic Historical Writing* (Princeton, 1998), 277.

and change as we today conceive the term. Nevertheless, to impose a chronological order to the Revelation, an exegetical tool known as abrogation (in three distinct forms²⁵⁸) developed.

It is allegedly based on several koranic verses, especially *sūra* 2:106: "Such of Our revelations (*āya*) as We abrogate or cause to be forgotten, we bring (in place) one better or the like of." This verse was taken by early Muslim commentators to refer mainly to inner contradictions between koranic verses, or separately, between the *Qur'ān* and the *Sunna* ('custom', later connected exclusively to the life of the Prophet by al-Shāfi'ī), and led to much effort in establishing the exegetical cum historical chronology of koranic revelations—one being the *sūra*.²⁵⁹

The prohibition of drinking wine in *sūra* 5:90, the verse considered the last revealed among others, could only then be accepted as the binding law against chronologically earlier 'abrogated' verses (prohibiting only excessive drinking or approaching prayer while under the influence of intoxicants, such as *sūra* 4:43).

It was the Islamic Tradition had to formulate and document the *institution* of the prohibition of wine, which was not adequately dealt with in the *Qur'ān*. Why did the absolutely authoritative *Qur'ān* not provide definitions for the *ḥudūd*, "limits" that God imposed in this case? This certainly does not imply that the *Qur'ān* did not exist in one form or another as a 'text' for inspiration, guidance, as a "Clear Warner" regarding the End

²⁵⁸ The three forms are: C *al-ḥukm wa al-tilāwa*: suppression of both the koranic wording & its ruling; *Naskh al-ḥukm dūna al-tilāwa*: suppression of the ruling but not its wording; *Naskh al-tilāwa dūna al-ḥukm*: suppression of the wording, but not its ruling (the type justifying the stoning penalty for adultery in the *fiqh*, as well as the issue of the number of sucklings required to ban a particular type of relationship). See Burton, *Collection*, 230-1; J. Burton, "Naskh", *Encyclopaedia of Islam*, new ed., vol. VII (Leiden, 1993), 1011

²⁵⁹ However, the term *āya* may refer to something other than the replacement of koranic verses one with another—such as social or legal innovations, if one reads the particular verse together with the context of its discussion. See Burton, *Ibid.*, 232.

of Days (*sūra* 11:2-3) and defining the Majesty of God (the two prominent themes running through the Message). Indeed, although no evidence exists for the survival of any *Qur'ān* datable earlier than the ninth century, ever more evidence has emerged affirming the traditional accounts that describe the *existence* of the *Qur'ān* in the earliest time of the nascent Islamic community, possibly even 'codified' by 'Uthmān and his appointed commission. Through the caliph's efforts, we are told, the definitive *Qur'ān* was made available to his successors as an instrument to help weld the diverse peoples of the rapidly expanding empire into a relatively unified policy,²⁶⁰ although never really achieved considering the existence of the 'Seven Readings' traditionally attributed to different Companion sources.²⁶¹

However, it can readily be seen that the use of the koranic text led to great variations in the early Believers attempts to apply the new-found koranic code in everyday situations. For example, when the *Qur'ān* says (*sūra* 2:219): "In both (*khamr* and games of chance) is sin and profit to men," some maintained that it is only excess in these that is forbidden. Indeed, from the eighth *sūra* (especially verse 5), and from various stories reported in the *Ḥadīth*, there were some who had *aḥwa'*, "bad inclinations", i.e. took a liberal, or even critical attitude towards the *Qur'ān*'s proscriptions.

e. If one accepts the placing of the literal *Qur'ān* into an historical context by way of abrogation together with *tafsīr* in the form of *ḥadīth*, one may say that early in his career, Muḥammad had not regarded his judicial activities as part of his prophetic office. In the same way, it may be said that the prophetic figure, a thorough pragmatist, caused changes to come about in the wake of some practical problem that he had to solve.

²⁶⁰ Estelle Whelan "Forgotten Witness: Evidence for the Early Codification of the Qur'an," *Journal of the American Oriental Society*, 118 (1998), 13.

²⁶¹ See Burton, "The 'Uthmān Collection", *Collection*, 138-160.

The Qur'ān undoubtedly places restrictions on *khamr*, but in this respect, it has to be asked how far these restrictions were due to the new socio-religious outlook, and how far by the development of an urban society. In general it seems that the Qur'ān was not innovating in this respect, but simply moving towards positions towards which the 'better elements' in society may have been moving due to inevitable social changes. The social differentiation may be reflected in the various *ḥadīths*, remnants of pious discussions, regarding the varying punishment for wine-drinkers, and the differing components which make up intoxicating liquor, what the Qur'ān vaguely calls *khamr*, in one case *sakar*, but never *nabīdh*, and what all modern writers on the topic call "wine". They show streams of conflicting values and tendencies of the Believers dependant upon region and custom, and are an echo of the debates within the Community of Believers during the first and second centuries of Islam, before the Law was solidified and documented.

The contradiction between what was known to be good and what the Qur'ān outlawed continued in a state of uneasy coexistence for at least 1,200 years, on the whole, due to the affects of widespread theoretical debates, with no real and certain connection to the real world in which the *fukahā'* lived. This situation is most prominently seen in the proto-Islamic penal system. In it, *ḥadīth* discussions report that the Prophet was inspired to apply a penalty for drinking wine that had not been supplied by the Qur'ān, and although Muḥammad is stated to have imposed forty lashes, the Companions have been imitated by the *fukahā'* in their preference for the analogy with the penalty supplied by the Qur'ān for the slander of believing females.²⁶² The Qur'ān stipulates 80 lashes as the *ḥadd*, the penalty for the latter; therefore curiously by *idjmā'*, the wine-drinking penalty was connected to this irrelevant action, and should therefore carry the same sanction, regardless of *ṣaḥīḥ* reports from the Prophet.

²⁶² Burton, *Introduction*, 166.

The penalty, one may note, is not for exceeding the speed limit, it is merely for driving the car at all: "The *ḥadd* is imposed for drinking wine even if it does not cause intoxication."²⁶³

In another stream of tradition, undoubtedly reflecting the social values of a different region and/or period, Muḥammad is further suggested to have inclined both towards forgiveness, or towards the execution of the persistent drinker. However, continued flogging for the forth and subsequent offences has been preferred by consent, *idjmā'* over death. By contrast, execution by stoning for the offence of adultery prevailed, overwhelming the objection that no such penalty is mentioned in the Qur'ān, and that, indeed, it runs counter to the penalties established there (in *sūras* 4:15 and 24:2).

The legal regulations that depart from the meaning of the relevant koranic statements were rationalised, as we have seen, on the argument that there were two historical bases for documenting and filling out the Law: the Qur'ān, and the second source of the Law, the '*Sunna*', which came to be defined not so much as the *Sunna* of the Muslims or the Community, but as the *Sunna* of the Prophet exclusively. This important differentiation was developed by Shāfi'ī to greatly reduce the problem of inner contradictions, and justified by the belief that the angel Gabriel invested the Prophet with two forms of Revelation, one to be recited (the Qur'ān) and one to fill out that document by human input, the Prophet's inspired, but not recitable, example.

The penalty for the agreed crime of wine-drinking was provided by this second inspired source, itself a form of *tafsīr*, which even when reduced to the Prophet's alleged instruction, still proved to be a problematic source, reflecting regional differentiation of the scholars debating the issue. In this case, despite being designed as a tool for just this type of purpose, *idjmā'* never got to the bottom of what the Prophet really instructed, and general agreement was never achieved in the issues of divinely instructed punishment, nor

²⁶³ Mālik, *al-Muwatta'*: Kitāb al-Aḥribā, bāb 1 (*al-ḥadd fī al-khamar*), tradition 2, 642.

constituents and definitions for the terms describing alcoholic beverage. This inevitably led to an array of personal interpretation which at least to some degree led to the natural distorting and destruction of the Prophet's now forgotten original intent, for reasons of innocent intellectual curiosity, inter *madhhab* scholarly polemics, or as a conscious misrepresentation whose motives cannot now be definitively understood.

f. Although there is no absolute proof, one may comfortably assume that the *Qur'ān* document, as the traditional view has it, is a literary artefact emanating from the earliest Community of Believers, and probably edited together definitively sometime during or up to the quarter-century following Muḥammad's death in A.H. 11/A.D. 632. It may or may not have had the Prophet's stamp of approval as there can be little doubt that it is an incomplete record of the full Revelation, and may represent a blending of texts from several different congregations.

If we take it that the koranic text reflects the conditions of the earliest community of Believers, the discrepancy between the *Qur'ān* and the interpretative *Ḥadīth* is quite understandable. As the believers moved out of Arabia, they found it necessary to define their own institutions, including the forbiddance of wine in relation to other civilisations, and Christian, Jewish, Zoroastrian, and other practices and prohibitions. This was perhaps partly because new Believers originating in those communities brought knowledge of such ritual practices into the community of Believers, and partly because of the sheer proximity of Believers to well-established Christian, Jewish, and Zoroastrian congregations in the "sectarian milieu" (to use John Wansbrough's classic phrase from his controversial *Qur'anic Studies* [Oxford, 1977])²⁶⁴ of the Fertile Crescent.

²⁶⁴ Wansbrough's views were convincingly challenged by Donner, *Islamic Origins*, 25-31, as well as in Whelan's conclusions in "Forgotten Witness," *American Oriental Society*, 8-10. In a different way, they are also challenged, generally polemically, by almost every Muslim scholar writing on Western

The Qur'ān's incomplete descriptions and vague allusions thus came to be complemented by precise definitions and limitations, necessarily cast as Prophetic *ḥadīths*, and derived from the need to understand the Qur'ān. Sometimes Muslim tradition even admits that in certain cases, prophetic tradition, not only fills out, but can prevail over the Qur'ān (especially referring to the five daily prayers instead of the two or three mentioned in various koranic verses, as well as the complex problem of the stoning penalty for adultery in the *fiqh*), as with the interjected punishment for the wine-drinker. However, another element, *idjmā'*, regional custom in the problematic (and unverifiable) form of 'consensus', also occasionally took precedence not only over Companion reports, but over prophetic precedent itself: the Prophet's death penalty for the repeated drinker was repealed by 'agreement'.

The issue of defining the parameters of wine show us a classic case of the *Ḥadīth* literature filling out, even completing the circumstances of Revelation, and providing an historical framework for the formation of the institution of the prohibition. But the *ḥadīths* only act as a reflection of their authors own understandings of how the origins 'must have been', based on the conditions and ideals of their own age. Our traditional sources indeed tell us of the values existing in the time of their composition, and only theoretically describe and debate the conditions in the time of the Prophet.

g. Although it is stated in the Qur'ān (which gives us enough to draw some general conclusions), the prohibition of intoxicants was interpreted to suit the values of those concerned at a particular point during the development of Islamic Law. It may be seen that the Word of God provided no solid basis during the period of the earliest Community, to enact a blanket ban on all and every form of intoxicant. Thus, the problematic nature

approaches to Islamic studies (refer to the numerous sites available on the Internet under "Wansbrough").

stemming from the koranic expressions of wine as a substance came to be defined, analysed and divided into myriad forms which have been highlighted even up to the modern period.

Indeed, from the origins and early development of Islam, one finds an uneasy coexistence between the koranic prohibition, and the persistent continuance of alcoholic stimulants. The Muslim scholars who, by use of philological logic (especially including the '*nabīdh*' device'), gave theoretical justification to those who, whether for theoretical, polemical or less lofty reasons, wished to limit the Prophet's 'clear wishes', as reflected in the *Qur'ān* and in accompanying *Ḥadīth* literature.

An ultimate consequence may be seen in Egypt, where the Turkish Mamlūk élite used to get drunk on *kumiz*, a potent brew of fermented mare's milk,²⁶⁵ until E.W. Lane's Cairo, where he made the remarkable observation in his classic *The Modern Egyptians* that "a kind of wine, formerly called *nabīdh* (a name that in no way denotes prohibited kinds of drink), may be lawfully drunk" by the modern Egyptians of his time, around 1836.²⁶⁶

We have seen that this drink was presented as made for and drunk by the Prophet, but not when it was more than two or three days old, the consequences of which carried through to the contemporary period, providing a moral and legal precedent for consumption of a mixture consumed in one stage or another of fermentation. The indecisive nature of the interpretative *ḥadīths* when describing this matter had consequences at least into the nineteenth century.

But why did the pious scholars create this curious, but brilliant class of drink? The answer will partly lie in the view that it was a practical device serving to differentiate between intoxicating drinks, and an historically ill-defined lightly fermented, or pre-

²⁶⁵ Irwin, *The Arabian Nights*, 154.

²⁶⁶ Lane described *nabīdh* as an infusion of dry grapes or dry dates, and added that the Muslims used to keep it until it had slightly fermented. Edward William Lane, *The Manners and Customs of the Modern Egyptians* (London, n.d.), 96.

fermented mixture having a certain narcotic effect but could not have been considered *khamr* or *sakar*. It will also partly lie in the view that the scholars were debating a theoretical situation brought about simply through the intellectual need for academic stimulation.

h. The total prohibition of wine and spirits (according to three of the four orthodox schools/sects²⁶⁷/systems of jurisprudence) is one of the distinctive marks of the Muslim world; its consequences can hardly be overrated. This is not seriously affected by the fact that transgressors have been many, according to our literary evidence. Even the common people could not always and everywhere refrain from their national drink, which was, we are told, a date mixture of several kinds.

Upon analysis of the Islamic prohibition of 'wine' and its widespread use in different forms and for differing purposes, a final summarising point may be added: Even to the modern period, it was a less serious offence to break one of God's commands, than to say that a command was not really God's. Resulting from the detailed and unreal scholarly debates, drinking wine became, therefore, a less serious offence than to say, as none have done, that God has not forbidden it.

²⁶⁷ As we have seen, only the Ḥanafī school allows the moderate use of *nabīdh* for medicinal purposes only. Like the other three schools, the Shī'a forbid the use of alcohol under any circumstances.

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